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Artist: Kayla Altman

6th Grade

Vega Elementary

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ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-988. Request from Bruce A. Levy, M.D., Executive Director, Texas State Board of Acupuncture Examiners, P.O. Box 2018, Austin, TX 78768-2018, regarding whether a chiropractor may test patients with injectable vitamins, and related questions (Request No. 988).

RQ-989. Request from Mr. Randol L. Stout, General Counsel, Upper Colorado River Authority, P.O. Box 1482, San Angelo, Texas 76902, regarding qualification for membership on the board of directors of the Upper Colorado River Authority (Request No. 989).

RQ-990. Request from the Honorable James Warren Smith, Frio County Attorney, 500 East San Antonio, Box 1 Pearsall, Texas, 78061-3100, regarding supervision of a juvenile convicted of perjury and placed on probation (Request No. 990).

RQ-991. Request from the Honorable Michael P. Fleming, Harris County Attorney, 1001 Preston, Suite 634, Houston, Texas, 77002-1892, regarding whether the Harris County Auditor is required to audit the Harris County Department of Education (Request No. 991).

RQ-992. Request from the Honorable James Warren Smith, Jr., Frio County Attorney, 500 East San Antonio, Box 1 Pearsall, Texas, 78061-3100, regarding disposition of defensive driving fees collected by a justice of the peace (Request No. 992).

RQ-993. Request from the Honorable Kenny Marchant, Chair, Committee on Financial Institutions, Texas House of Representatives, P.O. Box 2910, Austin, Texas, 78768-2910, regarding permissible activities of lenders prior to the vote on the home equity amendment to the Texas Constitution (Request No. 993).

RQ-994. Request from the Honorable Michael P. Fleming, Harris County Attorney, 1001 Preston, Suite 634, Houston, Texas, 77002-1891, regarding whether the Harris County Appraisal District may contract with another appraisal district to provide services in areas in which the districts' jurisdictions overlap (Request No. 994).

TRD-9712778

PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 81. Elections

1 TAC §81.75

The Office of the Secretary of State, Elections Division, proposes new rule, §81.75, concerning the procedure to enable persons on a space flight to vote on election day. The new rule is being proposed to define the procedure persons will follow to cast their votes from space, in accordance with the Texas Election Code (the "Code"), §105.002.

Ann McGeehan, Deputy Assistant Secretary of State for Elections, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Ms. McGeehan also has determined also that for each year of the first five years the rule is in effect the public benefits anticipated as a result of enforcing the rule will be to ensure that persons eligible to vote in Texas will not be prevented from doing so because they are on a space flight. There will be no effect on small business. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Ann McGeehan, Deputy Assistant Secretary of State for Elections, Office of the Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060, and must be received by October 31, 1997.

The new rule is proposed under the Code, §105.002, which requires the Secretary of State to prescribe procedures for voting from space on election day by secure electronic means by persons to whom this chapter applies.

The Code, Chapter 842, §105.002 is affected by this proposed new rule.

§81.75. Voting From Space.

(a) A person who meets the eligibility requirements of a voter voting under the Texas Election Code, Chapter 101, but who will be on a space flight during the early voting period and on election day, may vote under this chapter. In order to vote by this method, the voter must apply by a Federal Postcard Application ("FPCA") and meet the requisite deadlines under state law. The FPCA may be submitted by fax or other electronic means.

(b) The use of the National Aeronautics and Space Administration's electronic transmission program to send ballots to persons on a space flight is authorized.

(1) The ballot must be generated in the County Clerk's or Elections Administrator's Office with an embedded password.

(2) The ballot is electronically sent to the Johnson Space Center, and forwarded electronically to the space mission. In the event a direct link is not possible, such as with Space Station Mir, the ballot shall be forwarded to Russia or another appropriate source as determined by NASA and the Office of the Secretary of State, and then uplinked to the Space Station Mir or other space station as applicable.

(c) The voter then opens the ballot with the password and votes the ballot.

(d) The file in which the vote—without the ballot—is saved is then downlinked to Johnson Space Center. The vote is then electronically transmitted to the County Clerk's or Elections Administrator's Office. If the County Clerk's or Elections Administrator's office is not capable of receiving the vote electronically, the vote shall be electronically transmitted to the office of the Secretary of State for forwarding to the appropriate county.

(e) Upon receipt by the county, the file is printed and then duplicated on a blank ballot. The original electronic file and printed file must be preserved with the regular election records. The duplicated ballot is counted on election day with the other ballots cast from the space voter's precinct.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 30, 1997.

TRD-9712944

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 463-5650



Joint Primary

1 TAC §§81.145-81.157

The Office of the Secretary of State proposes §§81.145-81.157 concerning joint primary elections. These sections concern the conducting and financing of 1998 joint primary elections with state funds, including a timeline for entering a joint primary election agreement between county party officials and the county clerk or elections administrator, the applicability of the regular primary finance rules, and the duties of party officials, the county clerk or election administrator, and election workers in a joint primary election.

Clark Kent Ervin, Assistant Secretary of State, has determined that for the first five-year period the sections are in effect there will be an indeterminate fiscal savings for state or local government as a result of enforcing or administering the sections.

Mr. Ervin has determined also that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the joint conduct of the 1998 primary elections by party officials for those counties entering a joint primary agreement, with the aid of state money appropriated for that purpose. There will be no effect on small businesses. There will be no anticipated economic cost to the state and county chairs of the Democratic and Republican parties.

Comments on the proposal may be submitted to the Office of the Secretary of State, Cathie E. Penn, Program Administrator for Elections Funds Management, or Cindy Stapper, Elections Staff Attorney, P.O. Box 12060, Austin, Texas 78711.

The new sections are proposed under the Texas Election Code, §31.003, §172.126, and §173.011, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws, and, in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the Election Code that reduce the cost of the primary elections or facilitate the holding of joint primary elections within the amount appropriated by the legislature for that purpose.

The Texas Election Code, Chapter 172, Subchapter E, §172.126, and Chapter 173, Subchapter A, §173.011, are affected by these proposed new sections.

§81.145. Recommended deadlines to comply with statutory requirements for the conduct of joint primaries.

(a) November 24, 1997: Recommended date by which chairs who wish to conduct a joint primary should meet with the county

clerk or elections administrator to determine whether to enter a joint primary contract, and to determine the estimated number of election judges and clerks, members of the early voting ballot board, and central counting station personnel to be appointed from their appropriate parties, voting system(s) to be used, ballot formats, and precinct consolidation or combination plan, if precincts will be consolidated or combined. (It is permissible to create separate consolidation or combination plans for each party, as long as every consolidated or combined precinct has a co-judge representing each party.)

(b) December 1, 1997: Recommended date by which commissioners court should vote on approval of joint primary. The commissioners court resolution approving the joint primary should also be signed by the county clerk or elections administrator, and the county chair of both parties entering into the agreement.

(c) December 8, 1997 - (2nd Monday in December): Statutory date by which lists of names of election judges and clerks, early voting ballot board members, and central counting station personnel (if applicable) must be delivered to the county clerk or elections administrator by each party chair.

(d) December 15, 1997 - January 26, 1998: Recommended period in which joint election contract with statistical information and consolidation or combination plans should be filed with the Secretary of State. Contracts may be filed no later than first cost estimate deadline - January 26, 1998.

(e) January 26, 1998: Recommended date by which county clerk or elections administrator should inform the county chairs of any modification to the number of election judges and clerks, early voting ballot board members, and central counting station personnel to be appointed from their appropriate parties. The county chairs shall submit the appropriate number of names of individuals who can serve in the appropriate capacity within 3 days of receiving notice from the county clerk or elections administrator.

§81.146. Applicability of other rules.

Primary finance rules §§81.101-81.136 apply to the conduct of joint primaries, except provisions that are inconsistent with joint primary finance rules §§81.145-81.157 or that cannot feasibly be applied to joint primaries.

§81.147. County clerk or elections administrator to conduct joint primary.

In accordance with Section 172.126(a) of the Texas Election Code, the county clerk or elections administrator shall supervise the overall conduct of the joint primary elections. The county clerk is responsible for appointing the election judges and clerks, for determining ballot format and voting system for each precinct, and for procurement of election equipment and supplies.

§81.148. Appointment of joint primary election co-judges, alternate co-judges, clerks, early voting ballot board members and central counting station teams.

Upon receipt of the lists of names of election judges and clerks from each county chair due by December 8, 1997, the county clerk or elections administrator shall select co-judges, co-alternate judges, and appoint clerks (if applicable) for each precinct in accordance with §32.002(c) of the Texas Election Code and 1 TAC §81.152. The county clerk or elections administrator shall also select from the party lists co-judges and appoint members for the early voting ballot board and central counting station that shall be balanced equally from each

party's list of names, the total number of which shall be determined by the county clerk or elections administrator. Should the early voting ballot board or central counting station personnel be composed of an odd number of members, the county clerk or elections administrator will appoint the additional members from the party whose candidate for governor received the highest number of votes in the county in the most recent gubernatorial general election.

§81.149. Number of election workers per joint polling location.

The following table must be used to determine the number of election workers allowable for each joint precinct. The minimum number of clerks in a joint primary election is two, for a total of four workers per polling location, including the two presiding co-judges. Workers will be divided evenly between the two parties. If the total number of workers is an odd number, the extra worker is appointed from the list of the party whose candidate for governor received the highest number of votes in the precinct in the most recent gubernatorial general election. (If precincts have been consolidated or combined for the joint primary, then the highest number of votes is determined by adding the votes from the precincts that comprise the consolidated or combined precinct.) Figure 1: TAC §81.149.

§81.150. Qualifications of co-judges and alternate co-judges.

The presiding co-judge and alternate co-judge must be a qualified voter of the joint or consolidated or combined joint precinct. If a co-judge and alternate co-judge cannot be found for an individual precinct, then no joint primary will be held for that precinct. The precinct must be consolidated or combined with another precinct for which a co-judge and alternate co-judge have been listed.

§81.151. Authority of co-judges for joint primary polling locations, joint primary central counting station, and joint primary early voting ballot board.

Each co-judge has exclusive authority to conduct challenges on the eligibility of voters in the co-judge's own party primary in the polling place, to determine a voter's intent on an irregularly-marked ballot in the co-judge's primary if the ballots are counted at the polling place, to determine qualifications or challenges for ballots by mail or intent of voters of irregularly-marked ballots by mail in the co-judge's primary at the early voting ballot board meeting, and to determine a voter intent's on an irregularly-marked ballot in the co-judge's primary at the central counting station.

§81.152. Estimating voter turnout for joint primaries.

Each county chair shall estimate voter turnout for each precinct in accordance with §81.118 and then the county clerk or elections administrator shall combine the turnout for each joint primary precinct for both parties. This combined statistical information will be entered in Section A of the joint primary election services contract form. Joint physical requirements (i.e., ballots, election co-judges and clerks, voting devices or machines) will be used to arrive at estimated joint requirements of the joint primary countywide. It is recommended that the number of election co-judges and clerks to be appointed by each party be provided to the chair by November 24, 1997, with any supplementation made by January 26, 1998, the deadline in which the joint primary election services contract form must be filed with the Secretary of State. Figure 1: 1 TAC §81.152

§81.153. Delivery of election records and supplies.

In joint precincts using an electronic voting system in which only one ballot box is shared by both parties, delivery shall be made by the co-judge of the party whose candidate for governor received the

highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election. (This language should not in any manner be interpreted to prevent the county clerk or elections administrator from using separate ballot boxes for each party when using electronic voting systems.) The other co-judge or other clerks may be designated to deliver the ballot box by the co-judge of the party whose candidate for governor received the highest number of votes in the precinct in the most recent gubernatorial general election. Paper ballot boxes and returns would be delivered separately by each co-judge.

§81.154. Ballots for joint primary elections.

Each party's ballots for a joint primary election must be readily distinguished from the other. This distinction may be achieved through the use of different tints of ballot paper other than yellow for each party's ballots.

§81.155. Returning surplus funds.

Any surplus remaining in a primary fund account after payment of approved expenses shall be remitted to the county clerk or elections administrator immediately after the final payment from the fund of the necessary expenses for holding the primary elections for that year, but not later than July 1 following the applicable primary election. The surplus in the primary fund shall be remitted regardless of whether state funds were requested by the chair. Any surplus funds received by the county clerk or elections administrator under this section may be used only for paying the remaining expenses of the joint primary election. Any surplus funds remaining after the payment of all remaining expenses of the joint primary election by the county clerk or elections administrator shall immediately be remitted to the Secretary of State, not later than August 1 following the applicable primary election.

§81.156. Liability of county clerk or elections administrator.

Neither the county clerk nor elections administrator is liable, in his or her official capacity, for debts incurred by the county executive committee or the county chairs in connection with a joint primary election that is unpaid because legislative appropriation is insufficient, nor are they personally liable for those debts.

§81.157. Joint primary contract with the county election officer (county clerk, county elections administrator, or tax assessor collector).

The Joint Model Primary Election Contract (the "Joint Model Contract") prescribed by the Secretary of State is adopted by reference. Copies of the Joint Model Contract may be obtained from the Secretary of State. The Joint Model Contract must be used in an agreement for joint primary election services pursuant to the Texas Election Code, Section 31.092(b), between the county executive committee and the county elections officer, unless otherwise authorized by the Secretary of State. Any modification of the Joint Model Contract is not binding until approved in writing by the Secretary of State, and execution of such contract is not completed until such written approval is obtained. The county elections officer must submit an accounting of the actual costs incurred in performance of the joint contract before the county chair may make final payment. A detailed billing of all actual costs must be submitted with the Final Cost Report before the last 25% of funds will be paid. Only actual costs incurred by the county and payable under the provisions of the Election Code, such contract, or these administrative rules may be paid to the county from primary funds. If costs are to be paid directly by the county clerk or elections administrator, the county chair shall remit

the total amount of state funds forwarded to the county chair pursuant to Part I of the contract to the county clerk within 5 days of receipt of the primary funds. A contract may not allow for reimbursement for training election workers or providing materials published by the Secretary of State. Regular salaries of personnel regularly employed by the county may not be paid from or reimbursed to the county from the primary fund. A joint election primary contract for the 1998 primary elections cannot provide for any salary or compensation of the county election officer for the performance of any statutory duty or service. (Joint primary elections contract costs do not count against administrative salary limits set under 81.130.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 23, 1997.

TRD-9712654

Clark Kent Ervin

Assistant Secretary of State

Office of Secretary of State

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 463-5565



Part XII. Advisory Commission on State Emergency Communications

Chapter 253. Practice and Procedure

1 TAC §§253.1-253.31

The Advisory Commission on State Emergency Communications (ACSEC) proposes new Chapter 253 concerning general rules of practice and procedures for collection procedures and contested cases before ACSEC relating to the untimely delivery of 9-1-1 emergency service fees and 9-1-1 equalization and poison control surcharges and concerning the form of a petition for rulemaking and the procedure for the petition's submission, consideration and disposition.

James D. Goerke, Executive Director, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Goerke has also determined that for the first five-year period the rules are in effect the public benefit anticipated as a result of these new rules will be to ensure more efficient handling of collection procedures, contested cases before the ACSEC, and petitions for rulemaking. There is no economic cost to small or large businesses and/or individuals.

Comments on the proposed rules may be submitted to Mr. James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, facsimile number (512) 305-6937. Comments must be submitted no later than 5 p.m. on the thirtieth day after publication in the *Texas Register*.

The new rules are proposed under Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirement of all available

formal and informal procedures, and Government Code, §2001.021, which requires a state agency to prescribe the form for a petition by a person requesting the state agency to adopt a rule and the procedure for the petition's submission, consideration and disposition.

Texas Health and Safety Code, Chapter 771 is affected by the proposed new rules.

§253.1 Intent, Scope, and Construction of Rules

(a) This chapter applies to collection procedures and contested case hearings before the Advisory Commission on State Emergency Communications, including those referred to the State Office of Administrative Hearings, whether instituted by order of the commission or by the filing of an application, complaint, petition or any other pleading.

(b) These rules are intended to provide fair methods for hearing and resolving a service provider's or business service user's disagreements with certain official actions of the Advisory Commission on State Emergency Communications. These rules shall be construed to insure the fair and expeditious determination of every action.

(c) These rules supplement the procedures required by the Administrative Procedure Act, Ch. 2001, Government Code.

(d) The Advisory Commission on State Emergency Communications may adopt special rules of practice and procedure to be applicable only to certain types of proceedings which are not accommodated by these rules. When a special rule is in conflict with these rules, the special rule shall control.

(e) To the extent that any provision of this chapter is in conflict with any statute or substantive rule of the Advisory Commission on State Emergency Communications, the statute or substantive rule shall control.

(f) The administrative law judge, upon notice and hearing, may grant exceptions to procedural provisions of this chapter, if the administrative law judge determines that such exceptions are in the interest of justice or the efficient administration of this chapter.

(g) These rules establish collection and hearing procedures pursuant to Texas Health and Safety Code, §771.077. Pursuant to that section, the Advisory Commission on State Emergency Communications shall deposit amounts received as costs of collection in the general revenue fund. Fees and any associated late penalties collected pursuant that section shall be delivered to the appropriate regional planning commission or other designated public agency. For emergency communications districts voluntarily concurring in that section, fees and associated late penalties shall be delivered to the appropriate emergency communications district. Surcharges and any associated late penalties shall be deposited as provided by Texas Health and Safety Code, §771.072(f).

(h) Pursuant to Texas Health and Safety Code, §771.077(c), late penalties apply to service providers and not business service users. The use of collection and hearing procedures pursuant to Texas Health and Safety Code, §771.077 does not limit or constrain the Advisory Commission on State Emergency Communications from instituting a civil action against a business service user pursuant to Texas Health and Safety Code, §771.073(b).

(i) This chapter also includes rules that prescribe the form for an interested person to petition the Advisory Commission on State

Emergency Communications to adopt a rule and the procedure for the petition's submission, consideration, and disposition.

§253.2 Definition of Terms

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Administrative Law Judge - An individual designated by the commission to act as administrative law judge in a contested case under the Administrative Procedure Act, or in the event the commission has referred a contested case to the State Office of Administrative Hearings, an individual designated by the State Office of Administrative Hearings.

Administrative Hearings Clerk - An individual designated by the commission or the executive director of the commission to administer case filings in contested case hearings. The administrative duties of the administrative hearings clerk may be delegated as necessary.

Agency - The Advisory Commission on State Emergency Communications.

APA - The Administrative Procedure Act (Government Code, Chapter 2001).

Authorized representative - An attorney authorized to practice law in the State of Texas or, where permitted by applicable law, a person designated by a party to represent the party.

Business Service User - A user of a business service that provides telecommunications service, including 9-1-1 service, to end users through a publicly or privately owned telephone switch.

Commission - The Advisory Commission on State Emergency Communications.

Contested case - A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the commission after an opportunity for adjudicative hearing.

Informal Collection Procedures - Collection procedures that occur in an attempt to resolve matters in a fair and expeditious manner without the necessity of a contested case hearing.

Law - State and federal statutes, regulations, and relevant case law.

Party - A person named, or admitted to participate, in a contested case before the Advisory Commission on State Emergency Communications. The commission staff, except for any staff members assigned to assist an administrative law judge pursuant to §253.7(j)(2), shall be considered as a party, but not for purposes of motions for rehearing or appeal.

Person - Any individual, representative, corporation, or other entity, including any public or nonprofit corporation, or any agency or instrumentality of federal, state, or local government.

Proposal for decision - A proposed decision issued by the administrative law judge in accordance with APA, §2001.062.

Service Provider - A service provider of telecommunications service to which Texas Health and Safety Code, §§771.053 or 771.061 or 771.0711 applies.

SOAH - State Office of Administrative Hearings.

Staff - The staff of the Advisory Commission on State Emergency Communications or such persons as the commission may employ or contract with for services.

§253.3 Informal Collection Procedures by the Commission

(a) A service provider or business service user that disagrees with an initial written staff determination as to the untimely delivery of 9-1-1 emergency service fees or 9-1-1 equalization or poison control surcharges, the costs of collection, or recommended late penalties may request a reconciliation conference with the staff on the matter within 30 days of receipt of the staff's initial written determination. After the reconciliation conference, or if no reconciliation conference is requested within the 30 days, the staff shall notify the service provider or business service user in writing of its recommendation to the commission on the matter.

(b) If the service provider or business service user does not wish to dispute any part of the staff's recommendation to the commission, the service provider or business service user shall notify staff in writing within 30 days after receipt of the staff's recommendation. The staff will then present the non-disputed recommendation to the commission for consideration at an open meeting, except that the staff may administratively approve the non-disputed recommendation if it is for the full amount. If the commission approves the non-disputed recommendation, the service provider or business service user shall pay the amounts within 30 days after receipt of the notice of the commission's approval of the non-disputed recommendation.

(c) If the service provider or business service user wishes to dispute any part of the staff's recommendation to the commission, the service provider or business service user shall request a hearing within 30 days after receipt of the staff's recommendation. The request for a hearing must be in writing and must include a statement of grounds that sets out in detail the reasons the service provider or business service user does not agree with the staff's recommendation. Legal authority must be cited if the service provider or business service user disagrees with the staff's interpretation of the law. The staff will then begin to proceed to formal contested case proceedings, unless the staff determines that further settlement discussions with the service provider or business service user are warranted.

(d) If the service provider or business service user does not timely respond to staff's recommendation to the commission, the staff may then begin to proceed to formal contested case proceedings, unless the staff determines that further settlement discussions with the service provider or business service user are warranted.

§253.4 Jurisdiction

(a) The administrative law judge acquires jurisdiction over a contested case when the staff of the agency, or any person authorized by statute, files a request to docket a case in the form prescribed by the administrative hearings clerk, and in accordance with §253.8 of this chapter (relating to Filings).

(b) A request to docket a case shall be considered filed when the request to docket is received and file-marked by the administrative hearings clerk.

(c) A request to docket a case shall be submitted to the administrative hearings clerk, accompanied by legible copies of all pertinent documents (including but not limited to the original complaint, petition or application, or any other document describing

agency action giving rise to a contested case, and a proper certificate of service).

(d) Once the administrative hearings clerk docket a contested case, any party may move for appropriate relief, including, but not limited to, discovery and evidentiary rulings, continuances, and settings.

(e) The agency shall provide notice of hearing, as required under APA, §2001.051, and other applicable law.

(f) Hearings shall be conducted at the site designated by the administrative law judge in accordance with applicable law.

§253.5 *Powers and Duties of the Administrative Law Judge*

(a) The administrative law judge shall have the authority and duty to:

- (1) establish the jurisdiction of the agency;
- (2) conduct a full, fair, and impartial hearing;
- (3) take action to avoid unnecessary delay in the disposition of the proceeding; and
- (4) maintain order.

(b) The administrative law judge shall have the power to regulate the course of the hearing and conduct of the parties and authorized representative, including the power to:

- (1) set hearing dates;
- (2) convene the hearing at the time and place specified in the notice of hearing;
- (3) examine and administer oaths to witnesses;
- (4) remove persons whose conduct impedes the orderly progress of the hearing;
- (5) restrict attendance as permitted by the Texas Rules of Civil Procedure;
- (6) take testimony;
- (7) designate and align parties;
- (8) rule on motions and on the admissibility of evidence and amendment of pleadings;
- (9) rule on discovery issues;
- (10) establish discovery deadlines, limit discovery methods, compel discovery and issue sanctions for discovery violations;
- (11) issue orders relating to hearing and prehearing matters, including orders imposing sanctions, if allowed by applicable law;
- (12) admit or deny party status;
- (13) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations;
- (14) grant or deny a continuance;
- (15) request parties to submit legal memoranda, proposed findings of fact and conclusions of law;
- (16) issue subpoenas to compel the attendance of witnesses, or the production of papers or documents;
- (17) authorize the taking of depositions;

(18) set prehearing conferences and issue prehearing orders;

(19) ensure that information and testimony are introduced as conveniently and expeditiously as possible, including without limitation, limiting the time of argument and presentation of evidence and examination of witnesses without unfairly prejudicing the rights of parties to the proceedings;

(20) limit testimony to matters under the commission's jurisdiction;

(21) continue any hearing from time to time and from place to place;

(22) reopen the record of a hearing, before a proposal for decision is issued, for additional evidence where necessary to ensure fairness;

(23) issue proposals for decision pursuant to the APA, §2001.062;

(24) dismiss a case for lack of prosecution; and

(25) exercise any other appropriate powers necessary or convenient to ensure fairness, due process, and the interests of justice.

§253.6 *Substitution of Administrative Law Judge*

(a) If for any reason an administrative law judge is unable to continue presiding over a pending hearing, or issue a proposal for decision after the conclusion of the hearing, the commission or SOAH (in the event a case has been referred to SOAH) may appoint another administrative law judge as a substitute, in accordance with law, without the necessity of duplicating any duty or function already performed by the previous administrative law judge.

(b) The commission or SOAH (in the event a case has been referred to SOAH) may, for good cause, assign a substitute or additional administrative law judge to a proceeding without the necessity of duplicating any duty or function already performed by the previous administrative law judge.

§253.7 *Appearance of Parties at Hearings; Representation*

(a) A person may represent himself or herself.

(b) A person may be represented by an attorney authorized to practice law in the State of Texas or other representative when authorized by law.

(c) A party's representative shall enter his or her appearance in the case by filing a notice of appearance with the administrative hearings clerk.

(d) A party's representative of record shall be copied on all notices, pleadings, and other correspondence.

(e) A party's attorney of record remains the attorney of record in the absence of a formal withdrawal and an order approving such withdrawal must be issued by the administrative law judge.

(f) Not more than one representative for each party or aligned group of parties shall be heard on any question or in the hearing except upon leave of the administrative law judge.

(g) Party representatives shall:

(1) observe the letter and spirit of the Texas Lawyer's Creed, as adopted by the Texas Supreme Court, and the State Bar of

Texas' Texas Disciplinary Rules of Professional Conduct, including those provisions concerning improper ex parte communications with the commission and the administrative law judge;

(2) advise their clients and witnesses of applicable requirements of conduct and decorum;

(3) direct all objections, arguments, and other comments to the administrative law judge and not to other participants.

(h) Conduct and Decorum:

(1) those who attend or participate in hearings should conduct themselves in a manner respectful of the conduct of public business, and conducive to orderly and polite discourse. All those in attendance shall comply with the administrative law judge's directions concerning the offer of public comment, and conduct and decorum;

(2) in a hearing before the administrative law judge, the administrative law judge shall first warn a person violating this section to refrain from the specific conduct in violation. Upon further violation of this section by the same person, the administrative law judge may exclude that person from the proceeding for such time and under such conditions as necessary to correct the situation. Violation of this section shall also be sufficient cause for the administrative law judge to recess the hearing.

(i) Consolidation and Severance of Issues and Parties:

(1) Consolidation. Consistent with notices required by law, the administrative law judge may consolidate related cases or claims if consolidation will not prejudice any party and may save time and expense or otherwise benefit the public interest and welfare.

(2) Severance. The administrative law judge may sever issues in a proceeding or hold special hearings on separate issues if doing so will not prejudice any party and may save time and expense or benefit the public interest and welfare. The administrative law judge may sever contested enforcement cases or claims involving any number of parties, upon motion by any party, where the party can show that he would be unduly prejudiced if severance were not granted.

(j) Ex Parte Communication:

(1) No ex parte communication. Unless required for the disposition of an ex parte matter authorized by law, during the pendency of a contested case before the administrative law judge and the commission, no party, person, or their representatives shall communicate directly or indirectly with the administrative law judge or the commission concerning any issue of fact or law relative to the pending case, except on notice and opportunity for all parties to participate.

(2) Utilizing special skills of the agency. The administrative law judge may seek the special skills or knowledge of staff in evaluating the evidence in a contested case. The administrative law judge shall follow the following procedure:

(A) The administrative law judge shall issue an order, copied to all parties, asking the agency to assign, if available, a staff person with expertise who has not participated in the proceeding or in the processing of the matter being considered for potential consultation;

(B) All communications between the designated staff expert and the administrative law judge shall be either recorded or

in writing, and all such communications submitted to or considered by the administrative law judge shall be made available as public records when the proposal for decision is issued;

(C) During the pendency of the case before the administrative law judge and the commission, no party, person, or their representatives shall communicate directly or indirectly with the designated staff expert assigned to assist the administrative law judge concerning any issue of fact or law relative to the pending case, except on notice and opportunity for all parties to participate.

§253.8 Filings

The following requirements govern the filing or service on the administrative law judge of documents in docketed contested cases pending before the agency unless modified by order of the administrative law judge.

(1) Filing Original Materials.

(A) All documents shall be filed with the administrative hearings clerk at the following address: Administrative Hearings Clerk, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

(B) Submission of documents to be filed must include an original and two copies.

(C) Faxed submissions of documents will be accepted for filing provided sufficient copies are provided. The party filing a faxed document shall retain the original document and become its custodian.

(D) If the submitting party wishes a file stamped copy for the party's records, the party must provide one additional copy and a self-addressed stamped envelope.

(E) All documents filed with the administrative hearings clerk shall have the agency's assigned docket number and style of the case included and a certificate of service.

(2) Discovery Materials.

(A) Discovery documents shall be served upon other counsel or the parties, but shall not be filed with the administrative hearings clerk or served on the administrative law judge, except on special order of the administrative law judge. The party responsible for service of the discovery material shall retain a true and accurate copy of the original documents and become their custodian.

(B) If relief is sought in a discovery dispute, copies of the portions of the material in dispute only shall be filed with the administrative hearings clerk as attached exhibits with any pertinent motion.

(C) If discovery documents are to be used at trial or are necessary to a prehearing motion that might result in a final order on any issue, only the portions to be used along with a cover letter shall be supplied to the administrative hearings clerk.

(3) Service on All Parties. Pursuant to §253.7(d) of this title (relating to Appearance of Parties at Hearings; Representation), a copy of all filings shall be served on all parties.

(4) Certificate of Service. The person filing the document shall include a certificate of service that certifies compliance with this rule. If a filing does not contain a certificate of service or otherwise show service on all other parties, the administrative hearings clerk, if applicable, shall:

(A) return the filing; or

(B) send notice of noncompliance to all parties, stating the filing will not be considered until all parties have been served.

(5) **Time of Filing.** The deadline for filing documents with the administrative hearings clerk shall be by 3:00 p.m. local time, Monday through Friday, on regular business days, unless otherwise ordered by the administrative law judge.

§253.9 *Discovery*

(a) Parties to a contested case hearing shall have the discovery rights provided in the APA and applicable agency statutes and rules.

(b) Requests for issuance of subpoenas or commission should be directed to the administrative hearings clerk.

(c) All discovery requests should be initially directed to the party from which discovery is being sought.

(d) All disputes with respect to any discovery matter shall be filed with the administrative hearings clerk and heard by the administrative law judge.

(e) All parties will be afforded a reasonable opportunity to file objections or move for a protective order with respect to the issuance of a subpoena or commission.

(f) Copies of discovery requests and documents filed in response thereto shall be filed with all parties, but should not be filed with the administrative law judge or the administrative hearings clerk unless directed by the administrative law judge or when in support of a motion to compel, motion for protective order, or motion to quash.

(g) Permissible forms of discovery by parties are:

(1) oral depositions of a party or nonparty;

(2) written interrogatories to a party;

(3) requests of a party for admission of facts or the genuineness or identity of documents or things;

(4) requests of a party for production, examination and copying of documents or other tangible materials; and

(5) requests of a party for entry upon and examination of real or personal property, or both,

(h) The scope of discovery shall be the same as provided by the Texas Rules of Civil Procedure and shall be subject to the constraints provided therein for privileges, objections, protective orders and duty to supplement as well as the constraints provided in APA, §§2001.081, 2001.082, 2001.083, 2001.084, 2001.085 and 2001.088.

(i) Responses to discovery requests shall be made within a reasonable time period of not less than 14 days after service as directed by the party seeking discovery. The administrative law judge may shorten or lengthen such time periods as the interest of justice requires.

(j) Except as otherwise provided, requests for admission shall be governed by the applicable provisions of the Texas Rules of Civil Procedure. Each matter for which an admission is requested shall be separately stated. The matter shall be deemed to be admitted unless, within the prescribed time for responding, the party to whom the request is directed serves upon the requesting party a written

answer or objection addressed to the matter. A request for admission must clearly set forth this provision for deemed admissions, in bold print or by underlining, in a conspicuous location calculated to fairly inform the opposing party of the consequences of a failure to respond within the prescribed time. The administrative law judge may permit withdrawal, or amendment of responses and deemed admissions upon a showing of good cause, if necessary in the interest of justice.

(k) The administrative law judge may issue protective orders and orders compelling discovery responses. Requests for discovery orders shall contain a statement under oath or affirmation that, after due diligence, the desired information cannot be obtained through informal means, and that good cause exists for requiring discovery. The administrative law judge may conduct in camera inspections of materials when requested by a party or when necessary to determine facts required to issue appropriate discovery orders. The request for a discovery order may be denied if the request is untimely or unduly burdensome in light of the complexity of the proceeding, if the requesting party has failed to exercise due diligence, if the discovery would result in undue cost to the parties or unnecessary delay in the proceeding, or for good cause in the interest of justice.

(l) After notice and opportunity for hearing, an order imposing sanctions, as are just, may be issued by the administrative law judge for failure to comply with a discovery order or subpoena issued pursuant to a commission for deposition or production of books, records, papers or other objects. The order imposing sanctions may:

(1) disallow any further discovery of any kind or of a particular kind by the disobedient party;

(2) require the party, the party's representative or both to obey the discovery order;

(3) require the party, the party's representative or both to pay reasonable expenses, including attorney fees, incurred by reason of the party's noncompliance;

(4) direct that the matters regarding which the discovery order was made shall be deemed established in accordance with the claim of the party obtaining the order;

(5) refuse to allow the disobedient party to support or oppose designated claims or defenses or prohibit the party from introducing designated matters in evidence;

(6) strike pleadings or parts thereof or abate further proceedings until the order is obeyed; or

(7) dismiss the action or proceeding or any part thereof or render a decision by default against the disobedient party.

§253.10 *Prehearing Conferences*

(a) When appropriate, the administrative law judge may hold a prehearing conference to resolve matters preliminary to the hearing. At the discretion of the administrative law judge, a prehearing conference may be held by telephone.

(b) A prehearing conference may be convened to address the following matters:

(1) notice or jurisdiction;

(2) scope or party status;

(3) venue;

(4) factual and legal issues;

- (5) motions;
- (6) issuance of subpoenas;
- (7) discovery disputes;
- (8) scheduling;
- (9) stipulations;
- (10) settlement conferences;
- (11) requests for official notice;
- (12) identification and exchange of documentary evidence;
- (13) admissibility of evidence;
- (14) identification and qualification of witnesses;
- (15) order of presentation; and
- (16) such other matters as will promote the orderly and prompt conduct of the hearing.

(c) At the discretion of the administrative law judge, all or part of the prehearing conference may be recorded or transcribed.

§253.11 Orders

(a) The administrative law judge shall issue an order to regulate the conduct of the proceedings.

(b) The order shall be a part of the case record.

(c) An order may address any matter, including the following:

- (1) the actions taken or to be taken at a prehearing conference;
- (2) any of the subjects listed in §253.10(b) of this title (relating to Prehearing Conferences);
- (3) a requirement that the parties file prehearing statements of the case describing the parties' present positions on any matter including, but not limited to, the following:
 - (A) the disputed issues or matters to be resolved, and a summary of the facts or arguments supporting the parties' positions in each disputed issue or matter;
 - (B) a list of facts or exhibits to which a party will stipulate; and
 - (C) a description of the discovery, if any, the party intends to engage in and an estimate of the time needed to complete discovery;
- (4) a requirement that the parties discuss the prospects of settlement or stipulations and, if applicable, that they be prepared to report thereon at a prehearing conference; and
- (5) any other filing requirement or deadline imposed by statute, rule or order.

§253.12 Settlement Conferences

(a) Upon request of any party and approval by the administrative law judge, or at the administrative law judge's discretion, a conference may be held to address settlement possibilities.

(b) Settlement discussions shall not be made a part of the case record.

§253.13 Stipulations

(a) The parties, by stipulation, may agree to any substantive matter.

(b) Stipulations related to procedural matters must be approved by the administrative law judge.

(c) A stipulation may be filed with the administration hearings clerk into the record at the hearing.

§253.14 Form of Pleadings

(a) All pleadings filed under this chapter should contain:

- (1) the name of the party;
- (2) the names of all other known parties;
- (3) a concise statement of the facts and the law relied upon;
- (4) a prayer stating the type of relief, action, or order desired;
- (5) any other matter required by statute;
- (6) a certificate of service; and
- (7) the signature of the party or the party's authorized representative.

(b) All pleadings shall include the docket number assigned the case by the administrative hearings clerk.

§253.15 Motions

(a) Motions for continuance shall:

- (1) be in writing, and shall set forth the specific grounds upon which the party seeks the continuance;
- (2) be filed no later than five days before the date of the hearing, except, for good cause demonstrated in the motion, the administrative law judge may consider a motion filed subsequent to that time or presented orally at the hearing;
- (3) indicate that the movant has contacted the other party(ies) and whether there is opposition to the motion, or describe in detail the movant's attempts to contact the other party(ies);
- (4) if seeking a continuance to a date certain, include a proposed date or dates (preferably a range of dates) and must indicate whether the party(ies) contacted agree on the proposed new date(s); and
- (5) be served on the other party(ies) according to applicable filing and service requirements, except that a motion for continuance filed five days or less before the date of the hearing shall be served by hand or facsimile on the same date it is filed with the administrative hearings clerk, or by overnight delivery on the next day, unless the motion demonstrates such service is impracticable.

(b) Responses to written motions for continuance shall be in writing, except responses to written motions for continuance filed on the date of the hearing may be presented orally at the hearing. Written responses to motions for continuance shall be filed on the earlier of:

- (1) three days after receipt of the motion; or
 - (2) the date and time of the hearing.
- (c) All other motions shall:

(1) be in writing;

(2) be filed no later than seven days before the date of the hearing, except, for good cause demonstrated in the motion, the administrative law judge may consider a motion filed subsequent to that time or presented orally at a hearing;

(3) state concisely the relief requested and is accompanied by any necessary supporting documentation; and

(4) if seeking an extension of an established deadline shall:

(A) include a proposed date; and

(B) indicate that the movant has contacted the other party(ies) and whether there is opposition to the proposed date, or describe in detail the movant's attempts to contact the other party(ies).

(d) Responses to written motions other than motions for continuance shall be in writing, except responses to written motions filed on the date of the hearing may be presented orally at the hearing. Written responses to motions shall be filed on the earlier of:

(1) five days after receipt of the motion; or

(2) the date and time of the hearing.

(e) The filing or pendency of a motion does not alter or extend any time limit or deadline established by statute, rule or order.

(f) The administrative law judge may modify the deadlines imposed in this rule as necessary.

§253.16 Waiver of Right to Appear

(a) A party may waive the right to appear at the hearing unless prohibited by law;

(b) A waiver shall be in writing and filed with the administrative hearings clerk;

(c) A party may withdraw a waiver no later than seven days before the scheduled hearing. The administrative law judge may permit withdrawal of a waiver subsequent to that time on a showing of good cause.

§253.17 Conduct of Hearings

(a) Each party may:

(1) call witnesses;

(2) offer evidence;

(3) cross-examine any witness called by a party; and

(4) make opening and closing statements.

(b) Once the hearing commences, all proceedings including comments and arguments of counsel shall be part of the record. The parties may be off the record only with the permission of the administrative law judge. If the discussion off the record is relevant, then the administrative law judge will summarize the discussion for the record.

(c) Objections shall be timely noted in the record.

(d) The administrative law judge may continue a hearing from time to time and from place to place. If the time and place for the proceeding to reconvene are not announced at the hearing, a notice shall be mailed stating the time and place of the continuation of the hearing.

(e) The administrative law judge may question witnesses and/or direct the submission of supplemental data.

(f) Sanctions. On the administrative law judge's own motion or on motion of a party and after notice and an opportunity for a hearing, the administrative law judge may impose sanctions against a party for:

(1) filing a motion or pleading that is without legal merit, frivolous and brought:

(A) in bad faith;

(B) for the purpose of harassment, or;

(C) for any improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding.

(g) Transcription of oral hearings. All contested cases heard by an administrative law judge will be recorded. A copy of the recording will be furnished to any party to the proceeding upon written request to the administrative law judge and payment of any reasonable fee established by the agency. Any party desiring the hearing transcribed by a court reporter must make the necessary arrangements with the reporter and bear the costs.

§253.18 Telephone Hearings

(a) The administrative law judge may, with consent of the parties, conduct all or part of the hearing by telephone, video, or other electronic means, if each participant in the hearing has an opportunity to participate in, hear, and, except when a telephone is used, see the entire proceeding.

(b) All substantive and procedural rights apply to telephone hearings, subject only to the limitations of the physical arrangement.

(c) Documentary Evidence. For a telephone hearing, documentary evidence to be offered shall be mailed by the proponent to all parties and the administrative law judge at least five days before the hearing.

(d) Default. For a telephone hearing, the following, at the discretion of the administrative law judge, may be considered a failure to appear and grounds for default, if the conditions exist after the scheduled time for hearing:

(1) failure to answer the telephone;

(2) failure to free the telephone for a hearing; or

(3) failure to be ready to proceed with the hearing as scheduled.

§253.19 Evidence

(a) General. Evidence shall be admitted in accordance with the APA and the Texas Rules of Civil Evidence.

(b) Exclusion of witnesses:

(1) Upon request by any party, the administrative law judge may exclude witnesses other than parties from the hearing room, except when testifying.

(2) The administrative law judge may order the witness, parties, attorneys and all other persons present in the hearing room not to disclose to any witness excluded under this section the nature, substance, or purpose of testimony, exhibits, or other evidence introduced during the witness' absence.

(3) A party that is not a natural person may designate an individual to remain in the hearing room, even though the individual may be a witness.

(c) Pre-Filed Testimony. Pre-filed written testimony may be received pursuant to, and in accordance with, an order of the administrative law judge.

(d) Official Notice. The administrative law judge may take official notice of a fact that is judicially noticeable in accordance with the APA.

(e) The administrative law judge may limit testimony or any evidence that is irrelevant, immaterial, or unduly repetitious.

(f) When any papers or records in the custody and control of the agency are lost or destroyed, the parties, with the approval of the administrative law judge, may agree in writing on a brief statement of the matter contained therein or any person may at any time supply such lost records or papers as follows:

(1) Any person may make a written sworn motion before the administrative law judge stating the loss or destruction of such record or papers, accompanied by certified copies of the original, if obtainable, or by substantially correct copies.

(2) If, upon hearing, the administrative law judge is satisfied that they are substantially correct copies of the original, an order will be entered substituting such copies for the missing originals.

(3) Such substituted copies will be filed with and constitute a part of the record and have the force and effect of the originals.

§253.20 *The Record*

(a) Contents of record. The record in a contested case includes:

- (1) all pleadings, motions, briefs, and interim orders;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on objections;
- (5) any decision, opinion, or report by the examiner presiding at the hearing;
- (6) all staff memoranda or data submitted to or considered by the hearing examiner or members of the agency who are involved in making the decision;
- (7) proposed findings and exceptions;
- (8) any findings of fact or conclusions of law; and
- (9) the final order of the commission.

(b) Findings of fact. Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.

§253.21 *Proposal for Decision*

If the commission has not personally heard the evidence in the case or read the entire record, a decision adverse to a party other than the agency shall not be issued until after a proposal for decision has been prepared by the administrative law judge, served on all parties, and each party has been afforded the opportunity to file

exceptions and present briefs to the commission. If any party files exceptions or presents briefs, an opportunity must be afforded to all other parties to file replies to the exceptions or briefs. A proposal for decision must contain a statement of the issues in dispute, the reasons for the proposed decision, and findings of fact and conclusions of law necessary to support the proposed decision. Such proposal for decision shall be prepared by the administrative law judge and served on all parties of record within 30 days after conclusion of the evidence in the case, unless the administrative law judge, at that time, specifies a longer period of time within which the proposal for decision may be issued.

§253.22 *Filing of Exceptions and Replies*

(a) Any party of record may, within 10 days after service of the administrative law judge's proposal for decision, file with the commission exceptions to the proposal for decision. Replies to such exceptions shall be filed within seven days after the date of the filing of exceptions. The administrative law judge may extend the time for filing of exceptions and replies. A request for extension of time within which to file exceptions or replies shall be filed with the administrative law judge and shall be served on all parties of record prior to the expiration of the relevant filing period. The administrative law judge shall rule promptly on requests for extension of time and notify all parties of such ruling.

(b) Exceptions and replies to exceptions shall concisely state, with particularity, the relied upon evidence, arguments, and legal authority.

(c) Upon the expiration of the time for filing exceptions or replies to exceptions, or after such replies and exceptions have been filed and considered, the administrative law judge's proposal for decision shall be considered by the commission, who shall render a decision and issue an order.

§253.23 *Commission's Orders*

(a) All final orders shall be in writing and shall be signed and dated by the commission. A final decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If a party submitted proposed findings of fact, the final order shall include a ruling on each proposed finding.

(b) A party shall be notified either personally or by first class mail of any decision or order. When the commission issues a final decision or order ruling on a motion for rehearing, the agency shall send a copy of that final decision or order by first class mail to the attorneys of record and shall keep an appropriate record of that mailing. If a party is not represented by an attorney of record, then the agency shall send a copy of a final decision or order ruling on a motion for rehearing by first class mail to that party, and the agency shall keep an appropriate record of that mailing. A party or attorney of record notified by mail of a final decision or order as required by this section shall be presumed to have been notified on the date such notice is mailed.

(c) A final decision or order of the commission must be rendered within 60 days from the last date for filing of exceptions and replies to exceptions to the administrative law judge's proposal for decision, unless the administrative law judge, at the conclusion of the hearing, specifies a longer period of time within which the order may be issued.

§253.24 *Rehearing*

Except as provided in §253.28 of this title (relating to Emergency Order), a timely motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed by a party not later than the 20th day after the date the party or the attorney of record is notified of the final decision or order as required by §253.23 of this title (relating to Commission's Orders). Replies to a motion for rehearing must be filed with the agency not later than the 30th day after the date that the party or the attorney of record is notified of the final decision or order as required by §253.23. If agency action is not taken within the 45-day period after the date the party or the party's attorney of record is notified of the final decision or order as required by §253.23, the motion for rehearing is overruled by operation of law 45 days after the date the party or the attorney of record is notified of the final decision or order required by §253.23. The commission may, by written order, extend the period of time for filing motions for rehearing and replies and for agency action on a motion for rehearing except that an extension may not extend the period for agency action beyond the 90th day after the date that the party or party's attorney of record is notified of the commission's order as required by §253.23. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order or in the absence of a fixed date, 90 days after the date the party or the party's attorney of record is notified of the final decision or order as required by §253.23.

§253.25 *Judicial Review*

(a) Not later than the 30th day after the date on which the commission's order is final, the person charged shall comply with the order or file a petition for judicial review.

(b) Judicial review of the order or decision of the commission shall be under the APA.

§253.26 *Administrative Finality*

Administrative action shall become final upon the occurrence of any of the following:

(1) issuance by the commission of an order and failure to file a motion for rehearing in accordance with §253.24 of this title (relating to Rehearing); or

(2) issuance by the commission of an order and denial of a motion for rehearing, either expressly or by operation of law; or

(3) issuance by the commission of an order which includes a statement that no motion for rehearing will be entertained because the threat of imminent peril to the public health, safety, or welfare requires immediate effect be given to such order.

§253.27 *Effective Date of Order*

The effective date of an order, unless otherwise stated, is the date of its signing by the commission.

§253.28 *Emergency Order*

If the commission finds that an imminent peril to public health, safety, or welfare requires immediate effect of an order, such finding shall be stated in the order. The commission shall also state that such order is final and effective from and after the date signed. Such an order shall be final and appealable from and after the date signed and no motion for rehearing shall be required as a prerequisite for appeal.

§253.29 *Show Cause Orders and Complaints*

The commission may, at any time after notice to all interested parties, cite any person or entity under its jurisdiction to appear at a public

hearing and require such person or entity to show cause why it should not comply with any applicable statute, rule, regulation, or general order of the agency, with which it is allegedly in noncompliance or why the agency should not take a particular action permitted by law. All such show cause hearings shall be conducted in accordance with the provisions of this chapter.

§253.30 *Appeals*

Appeals from any final judgment of the district court may be taken by any party in the manner provided for in civil actions generally, but no appeal bond may be required of the agency.

§253.31 *Petitions for Rulemaking before the Commission*

(a) *Petition for Rulemaking.* Any interested person may petition the commission requesting the adoption of a new rule or the amendment of an existing rule.

(1) The petition shall be in writing and shall include a brief explanation of the rule, the reason(s) the new or amended rule should be adopted, the statutory authority for such a rule or amendment, and complete proposed text for the rule. The proposed text for the rule shall indicate by striking through the words, if any, to be deleted from the current rule and by underlining the words, if any, to be added to the current rule.

(2) Upon receipt of a petition for rulemaking by the agency, the executive director of the commission or his or her designee shall submit a notice for publication in the miscellaneous documents section of the Texas Register. The notice shall include a summary of the petition, the name of the individual, organization or entity that submitted the petition, and notification that a copy of the petition will be available for review and copying at the commission's offices. Comments on the petition shall be due three weeks from the date of publication of the notice. Failure to publish a notice of a petition for rulemaking in the Texas Register shall not invalidate any commission action on the petition for rulemaking.

(3) Within 60 days after submission of a petition, the commission either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings. If the commission does not consider and address the petition in an open meeting during the 60 days, the executive director of the commission shall initiate rulemaking proceedings.

(b) *Commission Initiated Rulemaking.* The commission may initiate rulemaking proceedings on its own motion or on the motion of the executive director of the commission. Nothing in this section shall preclude the executive director of the commission or his or her designee from consideration or development of new rules or amendments to existing rules without express direction from the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712503

James D. Goerke

Executive Director

Advisory Commission on State Emergency Communications

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 305-6911

TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 33. Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund

19 TAC §33.45

The Texas Education Agency (TEA) proposes an amendment to §33.45, concerning the policy for voting proxies of securities held in the Texas Permanent School Fund (PSF). The proposed amendment would authorize the executive administrator to delegate voting of proxies for securities not held in the internally managed portfolio of the PSF. External managers would be required to vote all proxies in the best interest of the PSF and held to the same voting policy as the internally managed portfolio.

Dean Murray, executive administrator of the Texas PSF, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Murray and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the income of the PSF would flow to school districts and reduce the tax burden to the public and the State of Texas. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701, or may be submitted electronically at the following address: <http://www.tea.state.tx.us/sboe/rules/proposed>. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §7.102(b)(32), which authorizes the State Board of Education to invest the PSF within the limits of the authority granted by the Texas Constitution, Article VII, §5(d), and the Texas Education Code, Chapter 43.

The new section implements the Texas Education Code, §7.102(b)(32).

§33.45. Proxy Voting Policy.

The State Board of Education (SBOE) recognizes its fiduciary obligations with respect to the voting of proxies of companies with securities that are owned by the Texas Permanent School Fund (PSF). Because the issues related to proxy voting are complex and directly impact investment values, the SBOE believes the PSF is best suited to vote the proxies of shares held in the PSF portfolio. Therefore, as part

of the PSF investment policy, the SBOE instructs the PSF executive administrator and investment staff to vote all of the PSF proxies of companies according to the following guidelines. **The executive administrator may delegate voting of proxies of securities not held in internally managed portfolios to external investment managers, provided voting is in accordance with the following guidelines.**

(1)-(2) (No change.)

(3) Other matters. On all other matters, the PSF executive administrator, [and] investment staff, **and external investment managers** shall vote proxies judged to be in the best interests of the PSF.

(4) Reporting to SBOE. At each regularly scheduled SBOE meeting, the PSF executive administrator shall advise the SBOE of all instances in which the PSF executive administrator **or external investment managers** voted against management. **External investment managers shall provide written reports monthly to the executive administrator according to procedures and a format established by the executive administrator.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712609

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 463-9701

Chapter 105. Foundation School Program

Subchapter AA. Commissioner's Rules Concerning Optional Extended Year Program

19 TAC §105.1001

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Education Agency (TEA) proposes the repeal of §105.1001 and new §105.1001, concerning optional extended year program. The new section ensures statutory compliance and provides support for districts to reduce and ultimately eliminate retention of students in Grades K-8.

In 1995, the Texas Legislature established the Optional Extended Year Program for students in Grades K-8.

House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167, establishes a four-year sunset review cycle for all state agency rules. The TEA is also conducting a review of 19 Texas Administrative Code (TAC) Chapter 105, Subchapter AA, Commissioner's Rules Concerning Optional Extended Year Program, in accordance with Rider 167. The TEA finds sufficient reason for the rule to continue to exist and intends to repeal and readopt the rule as indicated.

Felipe Alanis, deputy commissioner for programs and instruction, has determined that for the first five-year period the section is in effect there will be fiscal implications as a result of enforcing or administering the section.

The effect on local government (school districts) will be \$54,818,719 for fiscal year 1998 and \$58,474,092 for fiscal year 1999. These amounts are the 5.0% set-asides from state compensatory allotment. There will be no effect on the State (Texas Education Agency) and small businesses.

Mr. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide consistent administration of the grant program and give school districts well-defined guidelines for applying for Optional Extended Year Program funds. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701, or may be submitted electronically at the following address: <http://www.tea.state.tx.us/sboe/rules/proposed>. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §29.082, as amended by House Bill 4, 75th Texas Legislature, which authorizes the commissioner of education to adopt rules concerning Optional Extended Year Program.

The repeal implements the Texas Education Code, §29.082, as amended by House Bill 4.

§105.1001. Optional Extended Year Program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712610

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 463-9701



The new section is proposed under the Texas Education Code, §29.082, as amended by House Bill 4, 75th Texas Legislature, which authorizes the commissioner of education to adopt rules concerning Optional Extended Year Program.

The new section implements the Texas Education Code, §29.082, as amended by House Bill 4.

§105.1001. Optional Extended Year Program.

(a) Each school district seeking funding for an optional extended year program under the Texas Education Code, §29.082, must submit an application in a format prescribed by the commissioner of education. Once funded, the program shall comply with the provisions of the Texas Education Code, §29.082.

(b) School districts shall be funded annually based on the most recent district data available to the Texas Education Agency through the Public Education Information Management System (PEIMS). Funding shall be based on the following:

(1) Eligibility. School districts in which at least 35% of the students in Kindergarten through Grade 8 are from economically disadvantaged families will be eligible for funding.

(2) Maximum entitlement. Funding for an eligible school district under this section shall be based on the amount necessary to provide extended year instructional services to not more than 10% of the at-risk student population in Kindergarten through Grade 8.

(3) Per capita amount. The per capita amount will be determined by dividing the total program allocation by the sum of the maximum entitlement populations in Kindergarten through Grade 8 in eligible school districts.

(4) Reallocation. Program funds not requested by eligible school districts will be reallocated to school districts with 50% or more economically disadvantaged students.

(c) At a minimum, school districts will be required to provide services to the number of students identified on the school district's entitlement card used for funding. School districts that have fewer students participating in the optional extended year program than identified for calculating the school district's maximum entitlement (including reallocation, if applicable) will have their entitlement reduced on a per-capita basis.

(d) A school district receiving funds under the Texas Education Code, §29.082, that is also receiving funds for an optional extended year program for students in Kindergarten through Grade 8 under the Option 4 wealth equalization agreement authorized under the Texas Education Code, Chapter 41, must adjust its Option 4 equalization agreement. The district must adjust the agreement to redirect the use of funds to a qualifying activity other than an optional extended year program for students in Kindergarten through Grade 8 to the extent necessary to avoid duplicate funding of optional extended year programs.

(e) An optional extended year program may extend the day, the week, or the year. The program shall be conducted beyond the required instructional days which may include intercessions for year-round programs.

(f) A school district may use funds under this section for follow-up activities so long as the optional extended year program is provided for no less than 30 instructional days. Follow-up activities provided by this subsection are restricted to participants of the program.

(g) All costs under the optional extended year program must be necessary and reasonable for carrying out the objectives of the program and for the proper and efficient performance and administration of the program.

(h) Students who do not meet district standards or policies for promotion on the basis of academic achievement or demonstrated

proficiency of the subject matter of the course or grade level shall be eligible for services under the optional extended year program.

(i) A school district must include a parent/family awareness component in the program.

(j) Training required under Texas Education Code, §29.082 (d), shall provide teachers with the knowledge and skills needed to help students in the program meet challenging state content and student performance standards. Training is to occur prior to the implementation of the program. Additional professional development may be provided throughout the implementation of the program.

(k) A school district shall incorporate effective instructional strategies into the design of the program to ensure students are provided with the skills needed to be successful in the following school year. An extended day program must be implemented beyond the regular seven-hour day and may not include tutorials or extended in-school day-care services. A tutorial program is not an acceptable instructional design for the program.

(l) A school district shall submit an annual report evaluating the program in the time and format required by the Agency. The report shall include a complete list of students who participated in the program for at least one day.

(m) For audit purposes, a school district shall maintain documentation to support each of the requirements of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712611

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 463-9701



TITLE 22. EXAMINING BOARDS

Part XVIII. Texas State Board of Podiatric Medical Examiners

Chapter 379. Fees

22 TAC §379.1

The Texas State Board of Podiatric Medical Examiners proposes an amendment to §379.1, concerning Fees and License Renewal. The amendment is being proposed to include new charges for continuing medical education printouts and duplicate certificates.

Allen M. Hymans, Executive Director, has determined that for each year of the first five years the section is in effect there will be no fiscal implications as a result of enforcing or administering the sections.

Mr. Hymans also has determined that for each year for the first five years the rules are in effect the benefit to the public will be the ability to see a current certificate in each office and to

have a record of continuing medical education classes attended. The cost will be \$5.00 for each person who needs a copy of their continuing medical education printout in addition to the complimentary one that is sent out with their renewal notice, and \$15.00 for a duplicate renewal certificate.

Comments on or about the proposal may be submitted to Janie Alonzo, Staff Services Officer I, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216.

The amendment is proposed under Texas Civil Statutes, Article 4568(j), which provide the Texas State Board of Podiatric Medical Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not inconsistent with the law regulating the practice of podiatric medicine, the laws of this state, or of the United State; to govern its proceedings and activities, the regulation of the practice of podiatric medicine, and the enforcement of the law regulating the practice of podiatric medicine.

The proposed amendments implement the Podiatric Medical Practice Act, Articles 4571 and 4574.

§379.1. Fees.

(a) (No change.)

(b) Fees are as follows:

(1)-(9) (No change.)

(10) Copy of CME printout - \$5

(11) Duplicate Certificate - \$10

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712553

Janie Alonzo

Staff Services Officer I

Texas State Board of Podiatric Medical Examiners

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 305-7000



Part XXII. Texas State Board of Public Accountancy

Chapter 511. Certification as a CPA

General Information

22 TAC §511.57

The Texas State Board of Public Accountancy proposes an amendment to §511.57, concerning Definition of Accounting Courses.

The proposed amendment to §511.57 eliminates elementary accounting as an accounting core courses; changes the income tax accounting course semester hours into a total divisible by 3; consolidates two references to internships into one reference; explains that the knowledge to be gained should be accounting

knowledge; states what the employer should be providing for the student in an internship program; and renumbers the subsections due to the elimination of former subsection 1(A).

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be a rule that more accurately states what the board expects its applicants to have received from their accounting core courses and internships. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to Paul Gavia, acting General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, Section 6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, Section 6.

§511.57. *Definition of Accounting Courses.*

The board will accept not fewer than 30 passing semester hours of accounting courses (without repeat), taken at a recognized educational institution shown on official transcripts, **or accepted by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent**, of which 20 semester hours must be in core accounting courses, in the following subject areas:

- (1) accounting core courses:
 - [(A) elementary accounting];
 - (A) [(B)]** intermediate accounting, advanced accounting;
 - (B) [(C)]** cost accounting;
 - (C) [(D)]** auditing, internal accounting control and evaluation;
 - (D) [(E)]** report writing (principally writing financial reports, internal control reports, and management letters);
 - (E) [(F)]** financial statement analysis;
 - (F) [(G)]** accounting theory;
 - (G) [(H)]** up to six semester hours of income tax;
 - (H) [(I)]** accounting for governmental and/or other nonprofit organizations; and
 - (I) [(J)]** accounting systems;
- (2) other accounting courses:
 - (A) income tax accounting (not to exceed **12** [10] semester hours, including hours in paragraph (1) **(H)** [(G)] of this section);

(B) accounting consultation;

(C) accounting for specialized businesses or industries (such as fiduciaries, banks, etc.);

(D) an accounting internship program (**not to exceed three semester hours**) which meets the following requirements:

(i) the **accounting** knowledge gained is equal to or greater than the knowledge gained in a traditional **accounting** classroom setting;

(ii) [(iii)] the employing firm provides the faculty coordinator and the student with the objectives to be met during the internship;

(iii) [(v)] the internship is approved by the faculty advisor;

(iv) [(ii)] the employing firm provides a [formal training program] **significant accounting work experience with adequate training and supervision of the work performed by the student**;

(v) [(iv)] the employing firm provides an evaluation of the student at the conclusion of the internship, provides a letter describing the duties performed and the supervision to the student, and provides a copy of the documentation to the faculty coordinator and the student;

(vi) (No change.)

(vii) the student writes a paper demonstrating the knowledge gained in the internship; **and**

[(viii)] the student receives not more than three semester hours of credit for the internship (credit for only one internship course will be granted by the board); and]

(viii) [(ix)] the student and/or faculty coordinator provides evidence of all items upon request by the board;

(E) any other course which is principally accounting or auditing in nature but which may be designated by some other name (and the verification of which is obtained in writing from the particular college or university). After the November 1997 examination, elementary accounting may not be considered under this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712374

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 305-7800



Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Education, Experience, Educational Program, Time Periods and Type of License

22 TAC §§535.63–535.64

The Texas Real Estate Commission proposes an amendment to §535.63, concerning education and experience required for a real estate broker license and to §535.64, concerning education required for a real estate salesperson license. The amendment to §535.63 would permit a person previously licensed as a real estate broker or salesperson to qualify for a broker license without being subject to the statutory requirement of having two years of experience within the three year period prior to filing the application. The amendment would extend the waiver to persons licensed within a six year period prior to filing the application and require applicants to show two years of experience as a salesperson or broker within the eight year period prior to filing the application. The existing section permits a person licensed within a five-year period to qualify for a broker license. Authority to grant the waiver to persons licensed within a six-year period has been provided to the commission in the provisions of Senate Bill 1100, 75th Legislature (1997), effective September 1, 1997. The amendment also replaces the term "salesman" with "salesperson" as required by House Bill 814, 75th Legislature, and replaces the term "certification" with "renewal" as used in the current law.

The amendment to §535.64 would permit a person who was licensed as a salesperson within a six-year period prior to filing an application to qualify for a salesperson license without being subject to the core real estate course requirements for original licensing. The existing section permits a person licensed within a five-year period to qualify for a salesperson license without being subject the core real estate course requirements. TREC has been authorized to grant the waiver to persons licensed within a six-year period by Senate Bill 1100, 75th Legislature (1997), effective September 1, 1997. The amendment also replaces the term "salesman" with "salesperson" as required by House Bill 814, 75th Legislature. The amendment further conforms the section with the existing practice of permitting salespersons renewing their licenses to provide documentation of completion of core real estate courses no later than the day their licenses expire.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. The amendments may slightly increase the number of applications filed for broker or salesperson licenses. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be a facilitation in the return to practice by prior licensees. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by these sections is Texas Civil Statutes, Article 6573a.

§535.63. Brokers: Education and Experience.

(a)-(b) (No change.)

(c) For the purposes of determining compliance with the requirement of §7(c) for two years active experience as a real estate **salesperson** [salesman], this period starts with date of actual issuance of license, and inactive periods brought about by lack of broker sponsorship, regardless of the reason, cannot be included as active experience.

(d) (No change.)

(e) With respect to the education requirement of 60 semester hours in effect on and after January 1, 1985, the commission shall require not less than 12 semester hours (180 classroom hours) in courses reflecting course titles or course descriptions in the real estate disciplines, including but not limited to the statutory subject areas identified in the Act, §7(a) and §7(k). The commission will publish periodically guidelines as to the acceptability of related courses. Provided, however, that an applicant for broker licensure who was licensed as a **salesperson** [salesman] subject to the annual education requirements set forth in this Act must provide the commission satisfactory evidence of having completed 12 semester (180 classroom hours) of core real estate courses that would have been required for the applicant's third annual **renewal** [certification] of **salesperson** [salesman] licensure privileges.

(f) The commission may waive education and experience required for a real estate broker license if the applicant satisfies the following conditions.

(1) The applicant must have been licensed as a Texas real estate broker or **salesperson** [salesman] no more than **six** [five] years prior to the filing of the application.

(2) If the applicant was previously licensed as a Texas real estate broker, the applicant must have completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license. If the applicant was previously licensed as a Texas real estate **salesperson** [salesman], the applicant must satisfy all current education requirements for an original broker license.

(3) The applicant must have had not less than two years of active experience as a licensed real estate broker or **salesperson** [salesman] during the **eight-year** [seven-year] period prior to the filing of the application.

§535.64. Salesperson [Salesmen]: Education.

(a) In order to maintain licensure privileges, **salespersons** [salesmen] subject to annual education requirements shall furnish documentation to the commission of successful completion of appropriate courses no later than the [15th] day [of the month preceding the month] their licenses expire.

(b) (No change.)

(c) The commission may waive the education required for a real estate **salesperson** [salesman] license if the applicant satisfies the following conditions.

(1) The applicant must have been licensed either as a Texas real estate broker or as a Texas real estate **salesperson** [salesman] no more than **six** [five] years prior to the filing of the application.

(2) The applicant must have must completed any core real estate courses which would have been required for a timely renewal of the prior license, or if the renewal of the prior license was not subject to the completion of core real estate courses, the applicant must have completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712601

Mark A. Moseley

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 465-3900



Nonresidents

22 TAC §535.132

The Texas Real Estate Commission (TREC) proposes an amendment to §535.132, concerning nonresidents' eligibility for real estate licensure. The amendment would permit a nonresident previously licensed in Texas as a real estate broker or salesperson within the six-year period prior to the filing of the application to qualify for specific waivers of examination, experience or core real estate course requirements. The current section applies only to persons licensed within the preceding five years. Senate Bill 1100, 75th Legislature (1997), authorizes TREC to extend the waivers to persons licensed within a six-year period. The amendment also replaces the term "salesman" with "salesperson" as required by House Bill Number 814, 75th Legislature.

Mark A. Moseley, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Adoption of the amendment may slightly increase the number of nonresidents applying for a Texas real estate license. There is no anticipated impact on local or state employment as a result of implementing the section.

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be facilitation of the return to active status by prior licensees. There will be no effect on small businesses. There is no anticipated economic

cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by this section is Texas Civil Statutes, Article 6573a.

§ 535.132. *Eligibility for Licensure.*

(a) A person residing in another state may apply for a license under the provisions of Texas Civil Statutes, Article 6573a, (the Act), §14(b) and this section if the person:

(1) (No change.)

(2) was licensed as a Texas real estate **salesperson** [salesman] or broker no more than **six** [five] years prior to the filing of the application. The commission may waive examination, education and experience requirements if the applicant satisfies the conditions established by §535.61 of this title (relating to Waiver of Examinations) and by either §535.62 of this title (relating to Brokers: Education and Experience) or §535.63 of this title (relating to **Salespersons** [Salesmen]: Education).

(b) (No change.)

(c) An individual licensed as a broker who subsequently moves to another state would not be required to maintain an office in Texas unless the individual wished to sponsor a **salesperson** [salesman] in this state.

(d)-(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712602

Mark A. Moseley

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 465-3900



Licensed Real Estate Inspectors

22 TAC §535.212

The Texas Real Estate Commission (TREC) proposes an amendment to §535.212, concerning education and experience requirements for an inspector license. The amendment permits a person applying for a real estate inspector license or for a professional inspector license to substitute additional education or experience in lieu of the statutory requirements of having first been licensed as an apprentice inspector or real estate inspector and having performed inspections under the supervision of a professional inspector or a real estate inspector. Senate Bill

1100, 75th Legislature (1997), requires TREC to adopt rules permitting applicants to substitute additional education or experience to satisfy statutory requirement for licensing.

For an applicant for a real estate inspector license, the proposed amendment would permit a person to substitute an additional 30 classroom hours of core real estate inspection courses, or three years of experience in related occupations.

For an applicant for a professional inspector license, the proposed amendment would permit a person to substitute an additional 60 classroom hours of core real estate inspection courses, or five years of experience in related occupations.

Mark A. Moseley, general counsel, has determined that for the first five-year period the section is in effect there would be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. The amendments could cause slight increases in the number of applications filed for inspector licenses. There is no anticipated impact on local or state employment as a result of implementing the section.

Mr. Moseley also has determined that for each year of the first five years the section proposed is in effect the public benefit anticipated as a result of enforcing the section will be compliance with state law governing requirements for the licensing of inspectors. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section, other than the cost of additional educational courses, estimated at \$75 for each 30-hour course.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by this section is Texas Civil Statutes, Article 6573a.

§535.212. Education and Experience Requirements for a License.

(a)-(h) (No change.)

(i) **An applicant may substitute the following experience or additional education in lieu of the number of real estate inspections required by the Act and in lieu of the requirement that the applicant be licensed as an apprentice inspector or a real estate inspector before issuance of a license as a real estate inspector or as a professional inspector.** [Provided documentation is provided by the applicant as the commission finds reasonably necessary to support the experience claimed, the commission may accept the following in satisfaction of no more than 50% of the number of inspections required to obtain a professional inspector license.]

(1) **For a real estate inspector license, the applicant must have completed at least 30 additional hours of core real estate inspection courses acceptable to the commission, or the applicant must provide documentation satisfactory to the commission to establish that the person has been licensed or registered at least three years as an air conditioning and refrigeration contractor, architect, electrician, plumber, or professional engineer , or**

has at least three years of experience in an occupation involving the inspection, installation, service, repair or maintenance of the equipment or systems found in improvements to real property. [One year of experience as a builder, licensed architect or engineer, electrician, plumber, or in another licensed or registered occupation involving the installation, service, repair or maintenance of the equipment or systems found in improvements to real property may count as 25 inspections.]

(2) **For a professional inspector license, the applicant must have completed at least 60 additional hours of core real estate inspection courses acceptable to the commission, or provide documentation satisfactory to the commission to establish that the person has been licensed or registered at least five years as an air conditioning and refrigeration contractor, architect, electrician, plumber, or professional engineer , or has at least five years of experience in an occupation involving the inspection, installation, service, repair or maintenance of the equipment or systems found in improvements to real property.** [One year of such other experience, such as teaching, which the commission determines is substantially similar to that described in paragraph (1) may be substituted for the equivalent number of inspections permitted under the provisions of this section.]

(j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712603

Mark A. Moseley

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 465-3900



Registration of Easement or Right-of-Way Agents

22 TAC §§535.400–535.402

The Texas Real Estate Commission (TREC) proposes new §§535.400- 535.402, concerning registration of easement or right-of-way agents. The new sections implement Senate Bill 577, 75th Legislature (1997), which requires a person to register with TREC to engage in the business of selling, buying, leasing, or transferring an easement or right-of-way, for another and for compensation, for use in connection with telecommunication, utility, railroad, or pipeline service. The proposed sections would establish procedures for processing applications and complaints against registrants and adopt forms to be used by applicants and registrants.

New §535.400 adopts by reference application forms and a procedure for TREC to follow in processing applications for registration of individuals or businesses. The section requires TREC to issue a registration certificate to each registrant for display in the registrant's place of business. The section also establishes grounds for disapproving an application for registration and provides for a hearing on the application if

the applicant has complied with the statutory requirement for requesting a hearing.

New §535.401 adopts two notices by reference. Form ERW 3-0, Registrant's Office Notice, would be displayed in the registrant's office; the notice contains information about a recovery fund administered by TREC and provides information to assist consumers in contacting TREC for information. Form ERW 4-0, Notice Regarding Easements and Rights-of-Way, would be provided in a transaction to a party other than the party the registrant is representing. The notice contains information about the registrant and the party's right to be represented by an attorney or real estate broker.

New §535.402 establishes procedures for the investigation of complaints against registrants and provides additional grounds for suspending or revoking a registration. The section also provides for appeals from disciplinary orders against registrants.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be fiscal implications for the state as a result of enforcing or administering the sections. Filing fees paid by registrants are estimated to be \$61,600 for FY 1998 and approximately \$70,000 for FY 1999-2002 and thereafter. The cost to the state for administering the sections is estimated to be \$7,700 in FY 1998 and approximately \$8,000 for each year thereafter. No fiscal implications are estimated for local government. There is no anticipated impact on local or state employment as a result of implementing the section.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the creation of procedures for registering and handling complaints against registrants. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections other than the payment of filing fees, set by the statute at \$150 per year.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The new sections are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by these sections is Texas Civil Statutes, Article 6573a.

§535.400. Registration of Easement or Right-of-Way Agents.

(a) The Texas Real Estate Commission adopts by reference the following forms approved by the Texas Real Estate Commission. These forms are published by and available from the Texas Real Estate Commission, P. O. Box 12188, Austin, Texas 78711- 2188.

(1) ERW 1-0, Application For Easement Or Right-of-Way Agent Registration For An Individual; and

(2) ERW 2-0, Application For Easement Or Right-of-Way Agent Registration For A Business.

(b) An individual desiring to be registered by the commission as an easement or right-of-way agent must file form ERW 1-0 with the commission. If the applicant is a business, the applicant must file form ERW 2-0. All applicants must submit the applicable fees set forth in The Real Estate License Act, Texas Civil Statutes, Article 6573a, (the Act). The commission will not accept an application which has been submitted without the correct filing fees or which has been submitted in pencil.

(c) After the commission has accepted an application for filing, the commission shall process the application and promptly issue a certificate of registration, request any information required to complete the registration, or advise the applicant that the application has been terminated or disapproved, as the case may be.

(d) The commission shall assign a registration number to each registrant and shall provide each registrant with a certificate of registration. Each registration issued by the commission is valid until the last day of the month one year from the day the registration was issued. Each registrant shall display the certificate of registration issued by the commission in a prominent location in the registrant's place of business, as required by the Act, § 12(e). If the registrant maintains more than one place of business, the registrant shall display either the certificate or a copy of the certificate in each place of business.

(e) The commission may terminate an application with written notice to the applicant for failure to submit information or documentation within 60 days after the commission makes written request for the information or documentation.

(f) The commission may disapprove an application for registration with written notice to the applicant if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines) or the applicant has engaged in conduct prohibited by the Act. Provided a timely written request for a hearing is made by the applicant in accordance with the Act, §10, an applicant whose application for registration has been disapproved is entitled to a hearing. The hearing on the application will be conducted in accordance with the provisions of the Act, §10, and Chapter 533 of this title (relating to Practice and Procedure).

§535.401. Required Notices.

(a) The Texas Real Estate Commission adopts by reference the following forms approved by the Texas Real Estate Commission. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) Form ERW 3-0, Registrant's Office Notice; and

(2) Form ERW 4-0, Notice Regarding Easements and Rights-of- Way.

(b) Each registrant shall display form ERW 3-0 in a prominent location in each place of business the registrant maintains.

(c) Each registrant shall, before a party in a transaction other than the party the registrant represents is obligated to sell, buy, lease, or transfer a right-of-way or easement, provide to the party a copy of form ERW 4-0 completed by the registrant.

§535.402. Complaints, Disciplinary Action and Appeals.

(a) The investigation of complaints and disciplinary action by the commission against registrants will be conducted in accordance with the Act and §535.141 of this title (relating to Initiation of

Investigation). In addition to the grounds for revoking or suspending a registration listed in the Act, the commission may revoke or suspend the registration of a registrant on the following grounds:

(1) procuring or attempting to procure a registration by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application;

(2) failing or refusing on demand to produce a document, book, or record in the registrant's possession concerning an easement or right-of-way transaction involving the registrant for examination by the commission or its authorized agent; and

(3) failing within 10 days to provide information requested by the commission or its authorized agent in course of an investigation of a complaint.

(b) Appeals from disciplinary orders against a registrant will be governed by the Act, §18 and by Chapter 533 of this title (relating to Practice and Procedure).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712604

Mark A. Moseley

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 465-3900



Part XXXI. Texas State Board of Examiners of Dietitians

Chapter 711. Dietitians

22 TAC §§711.7, 711.9, 711.17

The Texas State Board of Examiners of Dietitians (board) proposes amendments to §§711.7, 711.9 and 711.17, concerning the regulation of licensed dietitians and provisional licensed dietitians. Specifically, the sections cover references required for the application procedure, clarification of supervision during the upgrade process for a provisional licensed dietitian, and further definition of continuing education requirements for poster sessions and conference exhibits. Section 711.7 (d)(4) is amended to clarify that upon application, two professional references must be submitted by licensed dietitians or registered dietitians who can attest to the applicant's dietetic skills and professional standards of practice. Section 711.9 (c)(6) provides clarification that supervision requirements must continue until the provisional licensed dietitian becomes a licensed dietitian. Section 711.17 (g)(6) is amended to further clarify that participation in poster sessions will be credited one hour for six poster sessions with a maximum of two clock hours for 12 poster sessions. Section 711.17 (h)(6) provides clarification that participation in conference exhibits is not an activity acceptable as continuing education.

Debbie Bradford, Executive Secretary, has determined that for the first five-year period the sections, as proposed, are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Ms. Bradford has also determined that for each of the first five years the sections are in effect, the public benefit as a result of enforcing or administering the sections will be to clarify the initial application process, the license upgrading process, and the continuing education requirements. There will be no cost to small businesses. There will be no effect on persons who may be required to comply with the sections. There will be no effect on local employment.

Comments on the proposal may be submitted to Debbie Bradford, Executive Secretary, Texas State Board of Examiners of Dietitians, 1100 West 49th Street, Austin, Texas 78756-3183, Telephone (512) 834-6601. Comments will be accepted for 30 days from the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under the Licensed Dietitian Act, Texas Civil Statutes, Article 4512h, §6, which provides the Texas State Board of Examiners of Dietitians with the authority to adopt rules concerning the regulation and licensure of dietitians.

The amendments affect Texas Civil Statutes, Article 4512h.

§711.7. Application Procedures.

(a) - (c) (No change.)

(d) Required application materials.

(1) - (3) (No change.)

(4) An applicant shall have **two professional** [board] **references** [reference] **(included in the application packet)** [forms] submitted by **licensed dietitians or registered dietitians** [two allied health professionals] who can attest to the applicant's dietetic skills and professional standards of practice. The references shall be persons who are not named elsewhere in the applicant's application and who are not current members of the board.

(5) - (8) (No change.)

§711.9. Provisional Licensed Dietitians.

(a) - (b) (No change.)

(c) Upgrading a provisional license. The purpose of this subsection is to set out the procedure to upgrade from provisional licensed dietitian to licensed dietitian.

(1) - (5) (No change.)

(6) The requirements of supervision as defined in subsection (a)(4)(F) of this section, shall continue until the provisional licensed dietitian becomes a licensed dietitian.

(d) - (e) (No change.)

§711.17. Continuing Education Requirements.

(a) - (f) (No change.)

(g) Continuing education undertaken by a licensee for renewal shall be acceptable if the experience falls in one or more of the following categories:

(1) - (5) (No change.)

(6) acceptance and participation in [a] poster sessions [session] offered by a nationally recognized professional organization in the dietetics field or its state equivalent organization. Participation will be credited **one hour for six poster sessions with** a maximum of two clock hours **for 12 poster sessions**;

(7) - (8) (No change.)

(h) Activities unacceptable as continuing education for which the board may not grant continuing education credit are:

(1) - (3) (No change.)

(4) activities described in subsection (g) of this section which have been completed more than once during the continuing education period; [or]

(5) performance of duties that are routine job duties or requirements **or**; [.]

(6) participation in conference exhibits.

(i) - (l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712682

Margarette Harden
Chair

Texas State Board of Examiners of Dietitians

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 458-7236

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 289. Radiation Control

The Texas Department of Health (department) proposes amendments to §§289.201, 289.202, 289.252, and 289.254 concerning general provisions, standards for protection against radiation, licensing of radioactive material, and licensing of radioactive waste processing and storage facilities. The amendment to §289.201 includes addition of a definition of radioactive waste, which is moved from §289.254 to a more appropriate location in §289.201; deletion of requirements for transport groups, which are moved to a more appropriate location in §289.254; and addition of a requirement for licensees to accept from the department samples collected from the licensees' facilities or from areas that are radioactive as a result of licensed activities. Section 289.202 is amended to clarify the radiation units that are to be used on records and to clarify decommissioning standards to be used by a licensee prior to vacating facilities or land. The amendment to §289.252 adds decommissioning timeliness and recordkeeping requirements and criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning. In §289.254, references to transport groups are changed to waste processing and storage categories to reflect that use of this term is unique to this section. Definitions and

other requirements concerning packaging and transportation of radioactive material are deleted from §§289.201, 289.202, 289.252, and 289.254 and are moved to a more appropriate location in new proposed §289.257. The amendments to §§289.202 and 289.252 are items of compatibility with the United States Nuclear Regulatory Commission and as an agreement state, Texas must adopt them. Minor grammatical corrections are made to the sections.

Mrs. Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for the first five-year period the sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as proposed.

Mrs. McBurney also has determined that for each year of the first five years the proposed sections will be in effect, the public benefit anticipated as a result of enforcing the sections will be to ensure that the requirements for the use of sources of radiation continue to be an effective means for protecting the public, workers, and the environment from unnecessary exposure to radiation. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be presented to Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, Telephone (512) 834-6688. Public comments will be accepted for 30 days following publication of this proposal in the *Texas Register*. In addition, a public hearing will be held at 1:30 p.m., Monday, October 13, 1997, in Conference Room N218, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

General

25 TAC §289.201, §289.202

The amendments are proposed under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

These amendments affect Health and Safety Code, Chapter 401.

§289.201. General provisions.

(a) Scope. Except as otherwise specifically provided, this section applies to all persons who receive, possess, use, transfer, or acquire any source of radiation, provided, however, that nothing in this section shall apply to any person to the extent such person is subject to regulation by the United States Nuclear Regulatory Commission (NRC) or to sources of radiation in the possession of federal agencies. Attention is directed to the fact that regulation by the state of source material, byproduct material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the state and the NRC and to Part 150 of the NRC [commission's] regulations (10 Code of

Federal Regulations (CFR) Part 150). [Nothing in §289.113 of this title (relating to Standards for Protection Against Radiation), shall be interpreted as limiting the intentional exposure of patients to radiation for the purpose of medical diagnosis, therapy, or research; provided, however, that no radiation may be deliberately applied to human beings except by or under the supervision of an individual authorized by and licensed in accordance with Texas' statutes to engage in the healing arts.]

(b) Definitions. The following words and terms when used in this **chapter** [section] shall have the following meanings, unless the **context** [text] clearly indicates otherwise.

(1) - (8) (No change.)

(9) Airborne radioactivity area - A room, enclosure, or area in which airborne radioactive materials exist in concentrations:

(A) in excess of the derived air concentrations (DACs) specified in [Appendix 21-B,] Table I, Column 1 of **§289.202(ggg)(2)(F) (relating to Standards for Protection Against Radiation)** [Texas Regulations for Control of Radiation (TRCR) Part 21 as adopted by reference in §289.113] of this title; or

(B) (No change.)

(10) - (11) (No change.)

(12) Becquerel (Bq) - The SI unit of activity. One becquerel is equal to **1** [one] disintegration or transformation per second (dps or tps).

(13) - (14) (No change.)

(15) Byproduct material - Byproduct material is defined as:

(A) (No change.)

(B) the tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes [, and other tailings (or wastes) having similar radiological characteristics].

(16) - (19) (No change.)

(20) Commission - The **Texas Natural Resource Conservation Commission** [United States Nuclear Regulatory Commission or its duly authorized representatives].

(21) - (22) (No change.)

(23) Curie (Ci) - A unit of measurement of radioactivity. One curie (Ci) is that quantity of radioactive material that decays at the rate of 3.7×10^{10} disintegrations per second (dps). Commonly used submultiples of the curie are the millicurie (**mCi**) and the microcurie (**μ Ci**). One **mCi** [millicurie (mCi)] = 1×10^{-3} **Ci** [curie] = 3.7×10^7 dps. One **μ Ci** [microcurie] = 1×10^{-6} **Ci** [curie] = 3.7×10^4 dps. One nanocurie (nCi) = 1×10^{-9} **Ci** [curie] 3.7×10^1 dps. One picocurie (pCi) = 1×10^{-12} **Ci** [curie] = 3.7×10^{-2} dps.

(24) (No change.)

(25) Deep dose equivalent (H_p), that applies to external whole body exposure - The dose equivalent at a tissue depth of **1** [one] centimeter (**cm**) (1000 milligrams per square centimeter (**mg/cm²**)) [**mg/cm²**].

(26) - (37) (No change.)

(38) Eye dose equivalent - The external dose equivalent to the lens of the eye at a tissue depth of **0.3 cm** [centimeter] (**300 mg/cm²**).

(39) Generally applicable environmental radiation standards - Standards issued by the United States Environmental Protection **Agency**[agency] (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(40) Gray (Gy) - The SI unit of absorbed dose. One gray is equal to an absorbed dose of **1** [one] joule per kilogram (**J/kg**) (100 rad).

(41) High radiation area - An area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.1 rem (**1**) [one] millisievert (**mSv**)) in **1**[one] hour at **30 cm** [centimeters] from any source of radiation or from any surface that the radiation penetrates.

(42) - (43) (No change.)

(44) Individual monitoring - The assessment of:

(A) (No change.)

(B) committed effective dose equivalent by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours. (See the definition for DAC-hours in **§289.202(c)** [§289.113] of this title); or

(C) (No change.)

(45) - (47) (No change.)

(48) Ionizing radiation - Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and **x rays** [x-rays], alpha and beta particles, high speed electrons, neutrons, and other nuclear particles.

(49) - (52) (No change.)

(53) Licensing state - Any state with rules equivalent to the *Suggested State Regulations for Control of Radiation* relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and has been designated as such by the Conference of Radiation Control Program Directors, Inc. **For the purposes of evaluation and/or distribution of sealed sources, this includes Licensing State Status: Product Review Only.**

(54) - (56) (No change.)

(57) Member of the public - Any individual, except **when that** [an] individual [who] is **receiving an occupational dose** [performing assigned duties for a licensee or registrant involving exposure to sources of radiation].

(58) - (63) (No change.)

(64) **NRC - The United States Nuclear Regulatory Commission (NRC) or its duly authorized representatives.**

(65) [(64)] Occupational dose - The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to sources of radiation **from licensed/registered and unlicensed/unregistered sources of radiation, whether in the possession of the licensee/registrant or other person**. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the public.

(66)[(65)] Particle accelerator - Any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and designed to discharge the resultant particulate or other associated radiation into a medium at energies usually in excess of **1 [one] MeV**.

(67) [(66)] Person - Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than the (**NRC** [commission]), and other than federal government agencies licensed or exempted by the **NRC** [commission].

(68) [(67)] Personnel monitoring equipment (See definition for individual monitoring devices.)

(69) [(68)] Pharmacist - An individual licensed by the Texas State Board of Pharmacy, and with license in good standing, to compound and dispense drugs, prescriptions, and poisons.

(70) [(69)] Physician - An individual licensed by the Texas State Board of Medical Examiners, with license in good standing.

(71) Principal activities - Activities authorized by the license that are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(72) [(70)] Public dose - The dose received by a member of the public from exposure to sources of radiation **released by a licensee, or to any other source of radiation under the control of a licensee/registrant** [from licensed or registered operations]. It does not include occupational dose **or doses** [, dose] received from background radiation, [dose received] as a patient from medical practices, or [dose] from voluntary participation in medical research programs.

(73) [(71)] Quality factor (Q) - The modifying factor listed in subsection (o)(3) and (4) of this section that is used to derive dose equivalent from absorbed dose.

(74) [(72)] Quarter (**calendar quarter**) [(Calendar Quarter)] - A period of time equal to one-fourth of the year observed by the licensee or registrant, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(75) [(73)] Rad - The special unit of absorbed dose. One rad is equal to an absorbed dose of 100 **ergs** [erg] per gram (**erg/g**) or 0.01 **J/kg** [joule per kilogram] (0.01 gray).

(76) [(74)] Radiation - One or more of the following:

(A) gamma and **x rays** [x-rays]; alpha and beta particles and other atomic or nuclear particles or rays;

(B) stimulated emission of radiation from any electronic device to such energy density levels as to reasonably cause bodily harm; or

(C) sonic, ultrasonic, or infrasonic waves from any electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(77)[(75)] Radiation area - Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05**mSv** [millisievert]) in **1 [one] hour** at **30 cm** [centimeters] from the source of radiation or from any surface that the radiation penetrates.

(78)[(76)] Radiation machine - Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(79)[(77)] Radiation safety officer (RSO) - An individual who has a knowledge of and the authority and responsibility to apply appropriate radiation protection rules, standards, and practices, and who must be specifically authorized on a certificate of registration or radioactive material license.

(80) [(78)] Radioactive material - Any material (solid, liquid, or gas) that emits radiation spontaneously.

(81) **Radioactive waste - Any discarded or unwanted radioactive material, unless exempted by agency rule or any radioactive material that would require processing before it could be put to a beneficial reuse. The term does not include byproduct material as defined in paragraph (15)(B) of this subsection, or uranium ore, naturally occurring radioactive material (NORM) waste, or oil and gas NORM waste.**

(82) [(79)] Radioactivity - The disintegration of unstable atomic nuclei with the emission of radiation.

(83) [(80)] Radiobioassay (See definition for bioassay.)

(84) [(81)] Registrant - Any person issued a certificate of registration by the agency **in accordance with** [pursuant to] this chapter and the Act.

(85) [(82)] Regulation (See definition for rule.)

(86) [(83)] Regulations of the United States Department of Transportation (DOT) - The requirements in 49 CFR Parts 100-189.

(87) [(84)] Rem - The special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (**1 [one] rem = 0.01 sievert (Sv)**).

(88)[(85)] Research and development - Research and development is defined as:

(A) theoretical analysis, exploration, or experimentation; or

(B) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(89) [(86)] Restricted area - An area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(90) [(87)] Roentgen (R) - The special unit of exposure. One roentgen (R) equals 2.58×10^{-4} C/kg [coulombs/kilogram] of air. (See definition for exposure.)

(91) [(88)] Rule (as defined in the Government Code, Chapters 2001 and 2002, as amended) - Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. The word "rule" was formerly referred to as "regulation."

(92) [(89)] Sealed source - Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions that are likely to be encountered in normal use and handling.

(93) [(90)] Shallow dose equivalent (H_s), (that applies to the external exposure of the skin or an extremity) - The dose equivalent at a tissue depth of 0.007 cm [centimeter] (7 mg/cm²) averaged over an area of 1 [one] square centimeter (cm²).

(94) [(91)] SI - The abbreviation for the International System of Units.

(95) [(92)] Sievert - The SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 [one] Sv = 100 rem).

(96) [(93)] Site boundary - That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

(97) [(94)] Source material - Source material is defined as:

(A) uranium or thorium, or any combination thereof, in any physical or chemical form; or

(B) ores that contain by weight 0.05% or more of uranium, thorium, or any combination thereof; and

(C) does not include special nuclear material.

(98) [(95)] Source of radiation - Any radioactive material, or any device or equipment emitting or capable of producing radiation.

(99) **Special form radioactive material - Radioactive material that satisfies the following conditions:**

(A) **It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;**

(B) **The piece or capsule has at least one dimension not less than 5 millimeters (mm) (0.2 inch (in)); and**

(C) **It satisfies the requirements specified by the NRC. A special form encapsulation designed in accordance with the NRC requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the NRC requirements in effect on March 31, 1996, and constructed prior to April 1, 1998, may continue to be used. A special form encapsulation either designed or constructed after April 1, 1998, must meet the requirements of this definition applicable at the time of its design or construction.**

[(96)] Special form - Any of the following physical forms of licensed material of any transport group:

[(A)] the material is in solid form having no dimension less than 0.5 millimeter or at least one dimension greater than 5 millimeters; does not melt, sublime, or ignite in air at a temperature of 1,000 degrees Fahrenheit; will not shatter or crumble if subjected to the percussion test described in subsection (q)(2) of this section; and is not dissolved or converted into dispersible form to the extent of more than 0.005% by weight by immersion for one week in water at 68 degrees Fahrenheit or in air at 86 degrees Fahrenheit; or

[(B)] the material is securely contained in a capsule that has no dimension less than 0.5 millimeter or at least one dimension greater than 5 millimeters; that will retain its contents if subjected to the tests prescribed in subsection (q)(2) of this section; and that is constructed of materials that do not melt, sublime, or ignite in air at 1,475 degrees Fahrenheit, and do not dissolve or convert into dispersible form to the extent of more than 0.005% by weight by immersion for one week in water at 68 degrees Fahrenheit or in air at 86 degrees Fahrenheit.]

(100) [(97)] Special nuclear material - Special nuclear material is defined as:

(A) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the NRC [commission], **in accordance with** [pursuant to] the provisions [of section 51] of the Atomic Energy Act of 1954, §51 as amended, determines to be special nuclear material, but does not include source material; or

(B) any material artificially enriched by any of the foregoing, but does not include source material.

(101) [(98)] Special nuclear material in quantities not sufficient to form a critical mass - Uranium enriched in the isotope 235 in quantities not exceeding 350 grams (g) of contained **uranium-235** [U-235]; **uranium-233** [U-233] in quantities not exceeding 200 g [grams]; plutonium in quantities not exceeding 200 g [grams]; or any combination of them in accordance with the following formula.

(A) ["] For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed "1" (i.e., unity).["]

(B) For example, the following quantities in combination would not exceed the limitation and are within the formula:

Figure 1 : 25 TAC §289.201(b)(101)(B)

[Figure 1: 25 TAC §289.201(b)(98)(B)]

(102) [(99)] Special units - The conventional units historically used by licensees and registrants, i.e., curie (activity), rad (absorbed dose), and rem (dose equivalent).

(103) [(100)] Survey - An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examination of location of materials and equipment, and measurements of levels of radiation or concentration of radioactive material present.

(104) [(101)] Termination - A release by the agency of the obligations and authorizations of the licensee or registrant under the terms of the license or certificate of registration. It does not relieve a person of duties and responsibilities imposed by law.

(105) [(102)] Test - A method of determining the characteristics or condition of sources of radiation or components thereof.

(106) [(103)] These rules - All sections of the Texas Regulations for Control of Radiation (TRCR).

(107) [(104)] Total effective dose equivalent (TEDE) - The sum of the deep dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(108) [(105)] Total organ dose equivalent (TODE) - The sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §289.202(rr)(1)(F) [21.1107(a)(6) of TRCR Part 21 as adopted by reference in §289.113] of this title.

(109) [(106)] Transport index - The dimensionless number (rounded up to the **next tenth** [first decimal place]) placed on the label of a package, to designate the degree of control to be exercised by the carrier during transportation. **The transport index is determined as follows:** [The transport index is determined by the number expressing the maximum radiation level in millirem per hour at 1 meter from the external surface of the package.]

(A) **For non-fissile material packages, the number determined by multiplying the maximum radiation level in millisievert per hour (mSv/hr) at 1 meter (m) (3.3 feet (ft)) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour (mrem/hr) at 1 m (3.3 ft)); or**

(B) **For fissile material packages, the number determined by multiplying the maximum radiation level in mSv/hr at 1 m (3.3 ft) from the external surface of the package by 100 (equivalent to the maximum radiation level in mrem/hr at 1 m (3.3 ft)), or, for criticality control purposes, the number obtained as described in 10 CFR 71.59, whichever is larger.**

(110) [(107)] Type A quantity - A quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in §289.257(s)(2) of this title (relating to Packaging and Transportation of Radioactive Material) [subsection (q)(5) of this section] or may be determined by procedures described in §289.257(s)(1)-(4) of this title [subsection (q)(5) of this section].

(111) [(108)] Type B quantity - A quantity of radioactive material greater than a type A quantity.

(112) [(109)] Unrefined and unprocessed ore - Ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

(113) [(110)] Unrestricted area (uncontrolled area) - An area, access to which is neither limited nor controlled by the licensee or registrant. For purposes of this chapter, "uncontrolled area" is an equivalent term.

(114) [(111)] Veterinarian - An individual licensed by the Texas Board of Veterinary Medical Examiners, with license in good standing.

(115) [(112)] Week - Seven consecutive days starting on Sunday.

(116) [(113)] Whole body - For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(117) [(114)] Worker - An individual engaged in work under a license or certificate of registration issued by the agency and controlled by a licensee or registrant, but does not include the licensee or registrant.

(118) [(115)] Working level (WL) - Any combination of short-lived radon daughters in **1 [one] liter** of air that will result in the ultimate emission of **1.3 x 10⁵ million electron volts (MeV) [MeV]** of potential alpha particle energy. The short-lived radon daughters are - for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(119) [(116)] Working level month (WLM) - An exposure to **1[one] working level** for 170 hours - 2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

(120) [(117)] Year - The period of time beginning in January used to determine compliance with the provisions of this chapter. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

(c) Exemptions.

(1) General provision. The agency may, upon application therefor or upon its own initiative, grant exemptions from the requirements of this chapter as it determines will not result in undue hazard to public health and safety or property. In determining such exemptions, the agency will consider:

(A) state of technology;

(B) economic considerations in relation to benefits to the public health and safety; and

(C) other societal, socioeconomic, or public health and safety considerations.

(2) Carriers. Common and contract carriers, freight forwarders, and warehousemen, who are subject to the rules and regulations of the DOT or the United States Postal Service (39 CFR Parts 14 and 15), are exempt from this chapter to the extent that they transport or store sources of radiation in the regular course of their carriage for another or storage incident thereto. Private carriers who are subject to the rules and regulations of the DOT are exempted

from this chapter to the extent that they transport sources of radiation. Common, contract, and private carriers who are not subject to the rules and regulations of the DOT or the United States Postal Service are subject to applicable sections of this chapter.]

(2) [(3)] United States Department of Energy (DOE) contractors and **NRC** [commission] contractors. Any DOE contractor or subcontractor and any **NRC** [commission] contractor or subcontractor of the following categories operating within Texas is exempt from this chapter, with the exception of **§289.204** [289.126] of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services), to the extent that such contractor or subcontractor under that individual's contract receives, possesses, uses, transfers, or acquires sources of radiation:

(A) prime contractors performing work for the DOE at United States government-owned or controlled sites, including the transportation of sources of radiation to or from such sites and the performance of contract services during temporary interruptions of such transportation;

(B) prime contractors of the DOE performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof;

(C) prime contractors of the DOE using or operating nuclear reactors or other nuclear devices in a United States government-owned vehicle or vessel; and

(D) any other prime contractor or subcontractor of the DOE or of the NRC when the state and the commission jointly determine that:

(i) the exemption of the prime contractor or subcontractor is authorized by law; and

(ii) in accordance with the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety and the environment.

(d) Records.

(1) Each licensee and registrant shall maintain records showing the receipt, transfer, and disposal of all licensed or registered sources of radiation. These records shall be maintained by the licensee or registrant until disposal is authorized by the agency. Additional record requirements are specified elsewhere in this chapter. All records required by this chapter shall be accurate and factual.

(2) **Records are only valid if stamped, initialed, or signed and dated by authorized personnel or otherwise authenticated.**

(3) **Each record required by this chapter must be legible throughout the retention period specified by the agency. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, or specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall**

maintain adequate safeguards against tampering with and loss of records.

(e) Inspections.

(1)-(2) (No change.)

(3) Routine inspection of radiation machines and services.

(A) Routine inspections by agency personnel will be made no more frequently than the intervals specified in subsection **(q)(1)** [(q)(3)] of this section. Registrants having certificates of registration authorizing multiple uses will be inspected at the most frequent interval specified for the uses authorized.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, for those radiation machines determined by the agency to constitute a minimal threat to human health and safety, the routine inspection interval will be five years. The applicable categories are listed in subsection **(q)(2)** [(q)(4)] of this section.

(C) (No change.)

(4) Training for agency inspectors of electronic products.

(A) - (B) (No change.)

(C) A person performing inspections of electronic products for the uses described in subparagraph (A) of this paragraph will receive training specified in subsection **(q)(3)** [(q)(6)] of this section.

(f) Tests.

(1) Each licensee and registrant shall perform, upon instructions from the agency, or shall permit the agency to perform such reasonable tests as the agency deems appropriate or necessary including, but not limited to, tests of:

(A) [(1)] sources of radiation;

(B) [(2)] facilities wherein sources of radiation are used or stored;

(C) [(3)] radiation detection and monitoring instruments; and

(D) [(4)] other equipment and devices used in connection with utilization or storage of licensed or registered sources of radiation.

(2) **Each licensee is required to accept from the agency, samples collected from its facility(ies) or from areas that are radioactive as a result of its licensed activities.**

(g) Tests for leakage and/or contamination of sealed sources.

(1) The licensee in possession of any sealed source shall assure that:

(A) (No change.)

(B) each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the agency, [after evaluation of information specified in §289.252(h)(7)(D) and (E) of this title (relating to Licensing of Radioactive Material),] or by the **NRC** [commission], an agreement state, or a licensing state **after evaluation of information specified in §289.252(h)(7)(D) and (E) of this title (relating to Licensing of Radioactive Material);**

(C) each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the agency, after evaluation of information specified in §289.252(h)(7)(D) and (E) of this title, or by the **NRC** [commission], an agreement state, or a licensing state[, or].

(D) (No change.)

(E) tests for leakage for all sealed sources, except brachytherapy sources manufactured to contain radium, shall be capable of detecting the presence of 0.005 μ **Ci** [microcurie] (185 becquerels (**Bq**)) of radioactive material on a test sample. Test samples shall be taken from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted where contamination might accumulate. For a sealed source contained in a device, test samples are obtained when the source is in the "off" position;

(F) the test for leakage for brachytherapy sources manufactured to contain radium shall be capable of detecting an absolute leakage rate of 0.001 μ **Ci** [microcurie] (37 **Bq** [becquerels]) of radon-222 in a 24-hour period when the collection efficiency for radon-222 and its daughters has been determined with respect to collection method, volume, and time; and

(G) tests for contamination from radium daughters shall be taken on the interior surface of brachytherapy source storage containers and shall be capable of detecting the presence of 0.005 μ **Ci** [microcurie] (185 **Bq** [becquerels]) of a radium daughter that has a half-life greater than four days.

(2) A licensee need not perform tests for leakage or contamination on the following sealed sources:

(A) -(B) (No change.)

(C) sealed sources containing 100 μ **Ci** [microcuries] (3.7 megabecquerels (**MBq**)) or less of beta or photon-emitting material or 10 μ **Ci** [microcuries] (370 kilobecquerels (**kBq**)) or less of alpha-emitting material;

(D) -(F) (No change.)

(3) Analysis of tests for leakage or contamination from sealed sources shall be performed by persons specifically authorized by the agency, the **NRC** [commission], an agreement state, or a licensing state, to perform such services.

(4) (No change.)

(5) The following shall be considered evidence that a sealed source is leaking:

(A) the presence of 0.005 (μ **Ci**) [microcurie] (185 becquerels (**Bq**)) or more of removable contamination on any test sample;

(B) leakage of 0.001 (μ **Ci**) [microcurie] (37 **Bq** [becquerels]) of radon-222 per 24 hours for brachytherapy sources manufactured to contain radium; or

(C) the presence of removable contamination resulting from the decay of 0.005 (μ **Ci**) [microcurie] (185 **Bq** [becquerels]) or more of radium.

(6) (No change.)

(7) Reports of test results for leaking or contaminated sealed sources shall be made in accordance with **§289.202(bbb)** [21.1208 of TRCR Part 21 as adopted by reference in §289.113] of this title.

(h)-(i) (No change.)

(j) Impounding. Sources of radiation shall be subject to impounding in accordance with §401.068 of the Act and §289.112 of this title (**relating to Hearing and Enforcement Procedures**).

(k) Prohibited uses.

(1) A hand-held fluoroscopic screen shall not be used with x-ray equipment unless it has been listed in the Registry of Sealed Sources and Devices maintained by the agency or the **NRC** [commission], or accepted for certification by the United States Food and Drug Administration (FDA), Center for Devices and Radiological Health.

(2) (No change.)

(l)-(n) (No change.)

(o) Units of exposure and dose.

(1) As used in this chapter, the unit of exposure is the coulomb per kilogram (C/kg) of air. One roentgen (**R**) is equal to 2.58×10^{-4} **C/kg** [coulomb per kilogram of air].

(2) As used in this chapter, the units of dose are as follows:

(A) Rad is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 **erg/g** [ergs per gram] or 0.01 **J/kg** [joule per kilogram] (0.01 gray). Gray (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 [one] **J/kg** [joule per kilogram] (100 rads).

(B) (No change.)

(C) Sievert (**Sv**) is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 **Sv** [one sievert] = 100 rems).

(3) (No change.)

(4) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per hour or rem per hour, as provided in subsection (o)(3) [(e)(3)] of this section, 1 [one] rem (0.01 **Sv** [sievert]) of neutron radiation of unknown energies may, for purposes of this section, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from the following table to convert a measured tissue dose in rad (gray) to dose equivalent in rem (**Sv** [sievert]).
Figure 4: 25 TAC §289.201(o)(4)

(p) Units of activity. For purposes of this chapter, activity is expressed in the special unit of curie (Ci) (becquerel (Bq)), or its multiples, or disintegrations or transformations per second (dps or tps).

(1) One **Ci** [curie (Ci)] = 3.7×10^{10} **dps or tps** [disintegrations or transformations per second (dps or tps)] = $3.7 \times$

10^{10} (Bq) = 2.22×10^{12} disintegrations or transformations per minute (dpm or tpm).

(2) One **Bq** [becquerel (Bq)] = **1 dps or tps** [one disintegration or transformation per second (dps or tps)].

(q) Appendices.

[(1) Transport grouping of radionuclides. (For use in §289.254(d) of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities).)

[Figure 5: 25 TAC §289.201(q)(1)]

[(A) Any radionuclide not specifically listed in this paragraph shall be assigned to one of the groups in accordance with the following table:

[Figure 6: 25 TAC §289.201(q)(1)(A)]

[(B) For mixtures of radionuclides, the following shall apply.

[(i) If the identity and respective activity of each radionuclide are known, the permissible activity of each radionuclide shall be such that the sum, for all groups present, of the ratio between the total activity for each group to the permissible activity for each group will not be greater than unity.

[(ii) If the groups of the radionuclides are known but the amount in each group cannot be reasonably determined, the mixture shall be assigned to the most restrictive group present.

[(iii) If the identity of all or some of the radionuclides cannot be reasonably determined, each of those unidentified radionuclides shall be considered as belonging to the most restrictive group that cannot be positively excluded.

[(iv) Mixtures consisting of a single radioactive decay chain where the radionuclides are in the naturally occurring proportions shall be considered as consisting of a single radionuclide. The group and activity shall be that of the first member present in the chain, except that if a radionuclide "X" has a half-life longer than that of that first member and an activity greater than that of any other member, including the first, at any time during transportation, the transport group shall be that of the nuclide "X" and the activity of the mixture shall be the maximum activity of that nuclide "X" during transportation.]

[(2) Tests for special form licensed material.

[(A) Free drop. A free drop through a distance of 30 feet onto a flat essentially unyielding horizontal surface, striking the surface in such a position as to suffer maximum damage.

[(B) Percussion. Impact of the flat circular end of a one inch diameter steel rod weighing three pounds, dropped through a distance of 40 inches. The capsule or material shall be placed on a sheet of lead, of hardness number 3.5 to 4.5 on the Vickers scale, and not more than one inch thick, supported by a smooth, essentially unyielding surface.

[(C) Heating. Heating in air to a temperature of 1,475 degrees Fahrenheit and remaining at that temperature for a period of ten minutes.

[(D) Immersion. Immersion for 24 hours in water at room temperature. The water shall be at pH 6 - pH 8, with a maximum conductivity of ten micromhos per centimeter.]

(1) [(3)] Routine inspection intervals for registrants.

Figure 5: 25 TAC §289.201(q)(1)

[Figure 7: 25 TAC §289.201(q)(3)]

(2) [(4)] Minimal threat radiation machines. The following radiation machines are considered to be of minimal threat:

(A) electron microscope;

(B) x-ray fluorescence (machine);

(C) x-ray gauges radiography—certified cabinet x-ray only;

(D) particle size analyzer (x-ray);

(E) baggage or package x-ray;

(F) electron beam welding;

(G) ion implantation devices; and

(H) cathodoluminescence devices.

[(5) Determination of A_1 and A_2 .

[(A) Single radionuclides.

[(i) For a single radionuclide of known identity, the values of A_1 and A_2 are taken from subparagraph (C) of this paragraph if listed there. The values A_1 and A_2 in subparagraph (C) of this paragraph are also applicable for the radionuclide contained in (α, n) or (γ, n) neutron sources.

[(ii) For any single radionuclide whose identity is known but which is not listed in subparagraph (C) of this paragraph, the value of A_1 and A_2 are determined according to the following procedure.

[(I) If the radionuclide emits only one type of radiation, A_1 is determined according to the following method. For radionuclides emitting different kinds of radiation, A_1 is the most restrictive value of those determined for each kind of radiation. However, in either case, A_1 is restricted to a maximum of 1,000 curies (37 terabecquerels). If a parent nuclide decays into a shorter lived daughter with a half-life not greater than ten days, A_1 is calculated for both the parent and the daughter, and the more limiting of the two values is assigned to the parent nuclide.

[(a-) For gamma emitters, A_1 is determined by the expression:

[Figure 8: 25 TAC §289.201(q)(5)(A)(ii)(I)(a-)]

[(b-) For x-ray emitters, A_1 is determined by the atomic number of the nuclide:

[Figure 9: 25 TAC §289.201(q)(5)(A)(ii)(I)(b-)]

[(c-) For beta emitters, A_1 is determined by the maximum beta energy (E_{\max}) according to subparagraph (D) of this paragraph; and

[(d-) For alpha emitters, A_1 is determined by the expression:

[Figure 10: 25 TAC §289.201(q)(5)(A)(ii)(I)(d-)]

[(II) A_2 is the more restrictive of the following two values:

[(a-) the corresponding A_1 ; and

[(b-) the value A_2 obtained from subparagraph (E) of this paragraph.

[(iii) For any single radionuclide whose identity is unknown, the value of A_1 is taken to be two curies (74 gigabecquerels)

and the value of A_2 is taken to be 0.002 curie (74 megabecquerels). However, if the atomic number of the radionuclide is known to be less than 82, the value of A_1 is taken to be ten curies (370 gigabecquerels) and the value of A_2 is taken to be 0.4 curie (14.8 gigabecquerels).

[(B) Mixtures of radionuclides, including radioactive decay chains.

[(i) For mixed fission products, the activity limit may be assumed if a detailed analysis of the mixture is not carried out.

[Figure 11: 25 TAC §289.201(q)(5)(B)(i)]

[(ii) A single radioactive decay chain is considered to be a single radionuclide when the radionuclides are present in their naturally occurring proportions and no daughter nuclide has a half-life either longer than ten days or longer than that of the parent nuclide. The activity to be taken into account and the A_1 or A_2 value from paragraph (5)(C) of this subsection to be applied are those corresponding to the parent nuclide of that chain. When calculating A_1 or A_2 values, radiation emitted by daughters must be considered. However, in the case of radioactive decay chains in which any daughter nuclide has a half-life either longer than ten days or greater than that of the parent nuclide, the parent and daughter nuclides are considered to be mixtures of different nuclides.

[(iii) In the case of a mixture of different radionuclides, where the identity and activity of each radionuclide are known, the permissible activity of each radionuclide R_1, R_2, \dots, R_n is such that $F_1 + F_2 + \dots + F_n$ is not greater than unity, where:

[Figure 12: 25 TAC §289.201(q)(5)(B)(iii)]

[(iv) When the identity of each radionuclide is known but the individual activities of some of the radionuclides are not known, the formula given in clause (iii) of this subparagraph is applied to establish the values of A_1 or A_2 as appropriate. All the radionuclides whose individual activities are not known (their total activity will, however, be known) are classed in a single group and the most restrictive value of A_1 and A_2 applicable to any one of them is used as the value of A_1 or A_2 in the denominator of the fraction.

[(v) Where the identity of each radionuclide is known but the individual activity of none of the radionuclides is known, the most restrictive value of A_1 or A_2 applicable to any one of the radionuclides present is adopted as the applicable value.

[(vi) When the identity of none of the nuclides is known, the value of A_1 is taken to be two curies (74 gigabecquerels) and the value of A_2 is taken to be 0.002 curie (74 megabecquerels). However, if alpha emitters are known to be absent, the value of A_2 is taken to be 0.4 curie (14.8 gigabecquerels).

[(C) A_1 and A_2 values for radionuclides

[Figure 13: 25 TAC §289.201(q)(5)(C)]

[(D) Relationship between A_1 and E_{\max} for beta emit-

ters.

[Figure 14: 25 TAC §289.201(q)(5)(D)]

[(E) Relationship between A_3 and the atomic number of the radionuclide.

[Figure 15: 25 TAC §289.201(q)(5)(E)]

[(F) Activity-mass relationships for uranium/thorium.

[Figure 16: 25 TAC §289.201(q)(5)(F)]

(3) [(6)] Training for agency inspectors of electronic products.

(A) Objectives. Training of agency inspectors of electronic products will be conducted by the agency. Upon completion of training, the inspector will be able to:

- (i) select and operate the necessary testing equipment **used** [use] to perform an inspection of electronic products;
- (ii) utilize radiation protection principles;
- (iii) operate radiation detection instruments;
- (iv) define basic regulatory terminology;
- (v) apply this section regarding electronic products;
- (vi) perform routine agency inspections of electronic products;
- (vii) complete agency inspection documentation;
- (viii) demonstrate knowledge of agency ethics, professional, and technical policies; and
- (ix) successfully achieve the objectives in this subparagraph.

(B) Initial training program.

(i) Initial training will be conducted during a six month period.

(ii) All training evaluation instruments will be developed by the agency.

(iii) Instruments to be used in determining a proficiency level are as follows:

(I) evaluation of each inspectors training needs prior to initial training;

(II) evaluation of knowledge obtained and verification of tasks performed by each inspector subsequent to training received by the agency; and

(III) evaluation of each inspector's task performance by the agency.

(C) Continuing education.

(i) The agency inspector of electronic products will accumulate 24 hours of continuing education regarding electronic products, at intervals not to exceed **24** [12] months. These hours of continuing education may be acquired as follows:

(I) documented continuing education earned in an agency-accepted training format; and

(II) agency staff meetings.

(ii) Failure to obtain 24 hours of continuing education within each **24** [12] month interval may result in a reassessment by the agency of an agency inspector's proficiency level.

(iii) After the initial training period, each inspector of electronic products will be evaluated by the agency, at intervals not to exceed 12 months.

(D) Agency proficiency standards. The agency proficiency standards for agency inspectors of electronic products are as follows.

(i) Level I. The agency inspector has not successfully achieved the objectives in subparagraph (A) of this paragraph after the initial training period. Additional training is required. Unsupervised inspections will not be performed.

(ii) Level II. The agency inspector has partially achieved the objectives in subparagraph (A) of this paragraph, but has not achieved the objective in subparagraph (A)(ix) of this paragraph after the initial training period. Additional training is required. Unsupervised inspections are not permitted for the type of electronic products for which the objectives of subparagraph (A)(ix) of this paragraph have not been achieved. Unsupervised inspections may be performed for the type of electronic products or which the objectives in subparagraph (A)(ix) of this paragraph have been successfully achieved.

(iii) Level III. The agency inspector has successfully achieved the objectives in subparagraph (A) of this paragraph. Supervision is not required for routine inspections.

§289.202 .Standards for Protection Against Radiation.

(a) (No change.)

(b) Scope. Except as specifically provided in other sections of this chapter, this section applies to persons licensed or registered by the agency to receive, possess, use, or transfer sources of radiation. The limits in this section do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, or to voluntary participation in medical research programs. **However, no radiation may be deliberately applied to human beings except by or under the supervision of an individual authorized by and licensed in accordance with Texas' statutes to engage in the healing arts.**

(c) Definitions. The following words and terms when used in this section shall have the following meaning, unless the context clearly indicates otherwise.

(1) Annual limit on intake (ALI) - The derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by Reference Man that would result in a committed effective dose equivalent of 5 rems (0.05 sievert (**Sv**)) or a committed dose equivalent of 50 rems (0.5 **Sv** [sievert]) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Columns 1 and 2 of Table I of subsection (ggg)(2) of this section.

(2) - (4) (No change.)

(5) Derived air concentration-hour (DAC-hour) - The product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent ALI, equivalent to a committed effective dose equivalent of 5 rems (0.05 **Sv** [sievert]).

(6) - (15) (No change.)

(16) Very high radiation area - An area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in 1 hour at 1 meter (**m**) from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, **Sv** [sievert] and rem.

(17) (No change.)

(d)-(e) (No change.)

(f) Occupational dose limits for adults.

(1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures in accordance with subsection (k) of this section, to the following dose limits.

(A) An annual limit shall be the more limiting of:

(i) the total effective dose equivalent being equal to 5 rems (0.05 **Sv** [sievert]); or

(ii) the sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 50 rems (0.5 **Sv** [sievert]).

(B) The annual limits to the lens of the eye, to the skin, and to the extremities shall be:

(i) an eye dose equivalent of 15 rems (0.15 **Sv** [sievert]); and

(ii) a shallow dose equivalent of 50 rems (0.5 **Sv** [sievert]) to the skin or to any extremity.

(2) - (6) (No change.)

(7) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams (**mg**) in a week in consideration of chemical toxicity. See footnote 3 of subsection (ggg)(2) of this section.

(8) (No change.)

(g) Compliance with requirements for summation of external and internal doses.

(1) (No change.)

(2) If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

(A) - (B) (No change.)

(C) the sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (**T**) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T , and the committed dose equivalent, $H_{T,50}$ [$H_{T,50}$], per unit intake is greater than 10% of the maximum weighted value of $H_{T,50}$ [$H_{T,50}$], that is, $w_T H_{T,50}$ [$w_T H_{T,50}$], per unit intake for any organ or tissue.

(3) - (4) (No change.)

(h) (No change.)

(i) Determination of internal exposure.

(1) - (7) (No change.)

(8) When determining the committed effective dose equivalent, the following information may be considered.

(A) In order to calculate the committed effective dose equivalent, the licensee may assume that the inhalation of 1 ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 5 rems (0.05 Sv [sievert]) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(B) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 50 rems (0.5 Sv [sievert]), the intake of radionuclides that would result in a committed effective dose equivalent of 5 rems (0.05 Sv [sievert]), that is, the stochastic ALI, is listed in parentheses in Table I of subsection (ggg)(2) of this section. The licensee may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee uses the stochastic ALI, the licensee shall also demonstrate that the limit in subsection (f)(1)(A)(ii) [(q)(1)(A)] of this section is met.

(j) Determination of occupational dose for the current year.

(1) For each individual who [may enter the licensee's or registrant's restricted area and] is likely to receive, in a year, an occupational dose requiring monitoring in accordance with subsection (q) of this section, the licensee or registrant shall determine the occupational radiation dose received during the current year.

(2) - (3) (No change.)

(4) If the licensee or registrant is unable to obtain a complete record of an individual's current occupational dose while employed by any other licensee or registrant, the licensee or registrant shall assume in establishing administrative controls in accordance with subsection (f)(8) of this section for the current year, that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 millisieverts (mSv)) for each quarter; or 416 millirems (mrem) (4.16 mSv [millisieverts]) for each month for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure.

(5) If an individual has incomplete (e.g., a lost or damaged personnel monitoring device) current occupational dose data for the current year and that individual is employed solely by the licensee or registrant during the current year, the licensee or registrant shall:

(A) assume that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 mSv [millisieverts]) for each quarter;

(B) assume that the allowable dose limit for the individual is reduced by 416 mrem [millirems] (4.16 mSv [millisieverts]) for each month; or

(C) (No change.)

(6) (No change.)

(k) - (1) (No change.)

(m) Dose to an embryo/fetus.

(1) If a woman declares her pregnancy, the licensee or registrant shall ensure that the dose to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5mSv [millisieverts]). If a woman chooses not to declare pregnancy, the occupational dose limits specified in subsection (f)(1) of this section are applicable to

the woman. See subsection (rr) of this section for recordkeeping requirements.

(2) The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in paragraph (1) of this subsection. The National Council on Radiation Protection and Measurements recommended in NCRP Report Number 91 "Recommendations on Limits for Exposure to Ionizing Radiation" (June 1, 1987) that no more than 0.05 rem (0.5 mSv [millisievert]) to the embryo/fetus be received in any 1 month.

(3) (No change.)

(4) If by the time the woman declares pregnancy to the licensee or registrant, the dose to the embryo/fetus has exceeded 0.45 rem (4.5 mSv [millisieverts]), the licensee or registrant shall be deemed to be in compliance with paragraph (1) of this subsection, if the additional dose to the embryo/fetus does not exceed 0.05 rem (0.5 mSv [millisievert]) during the remainder of the pregnancy.

(n) Dose limits for individual members of the public.

(1) Each licensee or registrant shall conduct operations so that:

(A) except as provided in subparagraph (B) of this paragraph, the total effective dose equivalent to individual members of the public from the licensed and/or registered operation does not exceed 0.1 rem (1 mSv [millisievert]) in a year, exclusive of the dose contribution from the licensee's disposal of radioactive material into sanitary sewerage **in accordance with subsection (gg) of this section, background radiation, exposure of patients to radiation for the purpose of medical diagnosis or therapy, or to voluntary participation in medical research programs** [, in accordance with subsection (gg) of this section];

(B) the total effective dose equivalent to individual members of the public from exposure to radiation from radiation machines does not exceed 0.5 rem (5 mSv [millisieverts]) in a year; and

(C) the dose in any unrestricted area from licensed and/or registered external sources does not exceed 0.002 rem (0.02 mSv [millisievert]) in any 1 hour.

(2) (No change.)

(3) A licensee or an applicant for a license may apply for prior agency authorization to operate up to an annual dose limit for an individual member of the public of 0.5 rem (5 mSv [millisieverts]). This application shall include the following information:

(A) (No change.)

(B) the licensee's program to assess and control dose within the 0.5 rem (5 mSv [millisieverts]) annual limit; and

(C) (No change.)

(4)-(5) (No change.)

(o) Compliance with dose limits for individual members of the public.

(1) (No change.)

(2) A licensee or registrant shall show compliance with the annual dose limit in subsection (n) of this section by:

(A) (No change.)

(B) demonstrating that:

(i) (No change.)

(ii) if an individual were continuously present in an unrestricted area, the dose from external sources of radiation would not exceed 0.002 rem (0.02 **mSv** [millisievert]) in an hour and 0.05 rem (0.5 **mSv** [millisievert]) in a year.

(3) - (4) (No change.)

(p) General surveys and monitoring.

(1) (No change.)

(2) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are operable and calibrated:

(A) by a person licensed or registered by the agency, another **agreement state** [Agreement State], a **licensing state** [Licensing State], or the United States Nuclear Regulatory Commission (NRC) to perform such service;

(B) - (E) (No change.)

(3) - (5) (No change.)

(q) Conditions requiring individual monitoring of external and internal occupational dose. Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of this section. As a minimum:

(1)-(2) (No change.)

(3) each licensee shall monitor, to determine compliance with subsection (i) of this section, the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(A) (No change.)

(B) minors and declared pregnant women likely to receive, in 1 year, a committed effective dose equivalent in excess of 0.05 rem (0.5 **mSv** [millisievert]).

(r) (No change.)

(s) Control of access to high radiation areas.

(1) The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(A) a control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of 0.1 rem (1 **mSv** [millisievert]) in 1 hour at 30 centimeters (**cm**) from the source of radiation from any surface that the radiation penetrates;

(B) - (C) (No change.)

(2)-(7) (No change.)

(t) Control of access to very high radiation areas.

(1) In addition to the requirements in subsection (s) of this section, the licensee or registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent

access to areas in which radiation levels could be encountered at 500 rads (5 grays) or more in 1 hour at 1**m** [meter] from a source of radiation or any surface through which the radiation penetrates at this level. This requirement does not apply to rooms or areas in which diagnostic x-ray systems are the only source of radiation [, or to non-self-shielded irradiators].

(2) (No change.)

(u) Control of access to very high radiation areas for irradiators.

(1) (No change.)

(2) Each area in which there may exist radiation levels in excess of 500 rads (5 grays) in 1 hour at 1**m** [meter] from a source of radiation that is used to irradiate materials shall meet the following requirements.

(A) Each entrance or access point shall be equipped with entry control devices that:

(i) (No change.)

(ii) permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1**mSv** [millisievert]) in 1 hour; and

(iii) prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep dose equivalent to an individual in excess of 0.1 rem (1**mSv** [millisievert]) in 1 hour.

(B) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by subparagraph (A) of this paragraph:

(i) the radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 **mSv** [millisievert]) in 1 hour; and

(ii) (No change.)

(C) The licensee shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:

(i) the radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1**mSv** [millisievert]) in 1 hour; and

(ii) (No change.)

(D) - (G) (No change.)

(H) Each area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after any use of the source of radiation, the radiation level from the source of radiation in the area is below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 **mSv** [millisievert]) in 1 hour.

(I) - (K) (No change.)

(3) - (4) (No change.)

(v) - (w) (No change.)

(x) Use of individual respiratory protection equipment.

(1) If the licensee uses respiratory protection equipment to limit intakes in accordance with subsection (w) of this section.

(A) - (B) (No change.)

(C) The licensee shall implement and maintain a respiratory protection program that includes:

(i) - (iv) (No change.)

(v) determination by a physician prior to initial fitting of respirators, and **either** [at least] every 12 months thereafter **or periodically at a frequency determined by a physician**, that the individual user is physically able to use the respiratory protection equipment.

(D) - (F) (No change.)

(2) - (4) (No change.)

(y) - (aa) (No change.)

(bb) Exceptions to posting requirements.

(1)-(2) (No change.)

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source(s) provided the radiation level at 30 centimeters from the surface of the sealed source container(s) or housing(s) does not exceed 0.005 rem (0.05 **mSv** [millisievert]) per hour. (cc)-(dd) (No change.)

(cc)-(dd) (No change.)

(ee) Procedures for receiving and opening packages.

(1) Each licensee who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in §289.201(b) **of this title and specified in §289.257(s)(1) [(q)(5)] of this title (relating to Packaging and Transportation of Radioactive Material)**, shall make arrangements to receive:

(A) -(B) (No change.)

(2) Each licensee shall:

(A) (No change.)

(B) monitor the external surfaces of a labeled package, labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in DOT regulations 49 CFR 172.403 and 172.436-440, for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in §289.201(b) **of this title and specified in §289.257(s)(1) [(q)(5)] of this title**; and

(C) (No change.)

(3) (No change.)

(4) The licensee shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the agency when removable radioactive surface contamination or external radiation levels exceed the limits established in subparagraphs (A) and (B) of this paragraph.

(A) Limits for removable radioactive surface contamination levels.

(i) The level of removable radioactive contamination on the external surfaces of each package offered for shipment shall be ALARA. The level of removable radioactive contamination may be determined by wiping an area of 300 square centimeters (**cm**²) of the surface concerned with an absorbent material, using moderate pressure, and measuring the activity on the wiping material. Sufficient measurements must be taken in the most appropriate locations to yield a representative assessment of the removable contamination levels. Except as provided in clause (iii) of this subparagraph, the amount of radioactivity measured on any single wiping material, when averaged over the surface wiped, must not exceed the limits given in clause (ii) of this subparagraph at any time during transport. If other methods are used, the detection efficiency of the method used must be taken into account and in no case may the removable contamination on the external surfaces of the package exceed 10 times the limits listed in clause (ii) of this subparagraph.

(ii) - (iii) (No change.)

(B) Limits for external radiation levels.

(i) External radiation levels around the package and around the vehicle, if applicable, will not exceed 200 **millirems per hour (mrem/hr)** [millirems/hr] (2 **millisverts per hour (mSv/hr)** [mSv/hr]) at any point on the external surface of the package at any time during transportation. The transport index shall not exceed 10.

(ii) For a package transported in exclusive use by rail, highway or water, radiation levels external to the package may exceed the limits specified in clause (i) of this subparagraph but shall not exceed any of the following:

(I) 200 **mrem/hr** [millirems/hr] (2 mSv/hr) on the accessible external surface of the package unless the following conditions are met, in which case the limit is 1,000 **mrem/hr** [millirems/hr] (10 mSv/hr):

(-a-) - (-c-) (No change.)

(II) 200 **mrem/hr** [millirems/hr] (2 mSv/hr) at any point on the outer surface of the vehicle, including the upper and lower surfaces, or, in the case of a flat-bed style vehicle, with a personnel barrier, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load (or enclosure, if used), and on the lower external surface of the vehicle (a flat-bed style vehicle with a personnel barrier shall have radiation levels determined at vertical planes. If no personnel barrier, the package cannot exceed 200 **mrem/hr** [millirems/hr] (2 mSv/hr) at the surface.);

(III) 10 **mrem/hr** [millirems/hr] (0.1 mSv/h) at any point 2 **m** [meters] from the vertical planes represented by the outer lateral surfaces of the vehicle, or, in the case of a flat-bed style vehicle, at any point 2 **m** [meters] from the vertical planes projected from the outer edges of the vehicle; and

(IV) 2 **mrem/hr** [millirems/hr] (0.02 mSv/hr) in any normally occupied positions of the vehicle, except that this provision does not apply to private motor carriers when persons occupying these positions are provided with special health supervision, personnel radiation exposure monitoring devices, and training in accordance with 22.12 of Texas Regulations for Control of Radiation (TRCR)

Part 22 as adopted by reference in §289.114 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections).

(5) - (6) (No change.)

(ff) General requirements for waste management.

(1) Unless otherwise exempted, a licensee shall discharge, treat, or decay licensed material or transfer waste for disposal only:

(A) by transfer to an authorized recipient as provided in subsection (jj) of this section or in, §289.127 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)), §289.252 of this title [(relating to Licensing of Radioactive Material)], or §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities), **§289.257 of this title**, or to the United States Department of Energy (DOE);

(B) - (D) (No change.)

(2) (No change.)

(gg) Discharge by release into sanitary sewerage.

(1) A licensee may discharge licensed material into sanitary sewerage if each of the following conditions is satisfied:

(A) - (C) (No change.)

(D) the total quantity of licensed radioactive material that the licensee releases into the sanitary sewerage in a year does not exceed 5 curies (Ci) (185 gigabecquerels (GBq)) of hydrogen-3, 1 Ci [curie] (37 GBq [gigabecquerels]) of carbon-14, and 1 Ci [curie] (37 GBq [gigabecquerels]) of all other radioactive materials combined.

(2) (No change.)

(hh) - (ii) (No change.)

(jj) Transfer for disposal and manifests.

(1) The [requirements of this subsection and subsection (gg)(4) of this section are designed to] control of transfers of low-level radioactive waste intended for disposal at a licensed low-level radioactive waste disposal facility, **the establishment of** [establish] a manifest tracking system, and **additional** [supplement existing] requirements concerning transfers and recordkeeping for those wastes **are found in §289.257(s)(5) of this title**.

(2) Each shipment of radioactive waste designated for disposal at a licensed low-level radioactive waste disposal facility shall be accompanied by a shipment manifest as specified in subsection (ggg)(4)(A) of this section.

(3) Each shipment manifest shall include a certification by the waste generator as specified in subsection (ggg)(4)(B) of this section.]

(2)[(4)] Each person involved in the transfer of waste for disposal including the waste generator, waste collector, and waste processor, shall comply with the requirements specified in **§289.257(s)(5) of this title** [subsection (ggg)(4)(C) of this section].

(5) Each shipment of waste to a licensed land disposal facility in Texas shall be inspected by the agency prior to shipment. The waste shipper shall notify the agency no less than 72 hours prior to the scheduled shipment of the intent to transport waste to the licensed land disposal facility.]

(kk) Compliance with environmental and health protection regulations. Nothing in subsections (ff), (gg), (hh), or (jj) of this section relieves the licensee from complying with other applicable federal, state, and local regulations governing any other toxic or hazardous properties of materials that may be disposed of **in accordance with** [according to] subsections (ff), (gg), (hh), or (jj) of this section.

(ll) General provisions for records.

(1) Each licensee or registrant shall use the SI units becquerel, gray, sievert, and coulomb per kilogram, or the special units curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this section. Disintegrations per minute may be indicated on records of surveys performed to determine compliance with subsection (ggg)(6)[(ggg)(7)] of this section. **To ensure compatibility with international transportation standards, all limits in this section are given in terms of dual units: The International System of Units (SI) followed or preceded by United States (U.S.) standard or customary units. The U.S. customary units are not exact equivalents, but are rounded to a convenient value, providing a functionally equivalent unit. For the purpose of this section, either unit may be used.**

(2) **Notwithstanding the requirements of paragraph (1) of this subsection, when recording information on shipment manifests, as required in §289.257 of this title, information must be recorded in SI units or in SI and units as specified in paragraph (1) of this subsection.**

(3) [(2)] The licensee or registrant shall make a clear distinction among the quantities entered on the records required by this section, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, eye dose equivalent, deep dose equivalent, or committed effective dose equivalent.

(4) [(3)] Records required in accordance with §289.201(d) of this title, and subsections (mm), (nn), (oo), (tt), and (uu) of this section shall include the date and the identification of individual(s) making the record, and, as applicable, a unique identification of survey instrument(s) used, and an exact description of the location of the survey. Records of receipt, transfer, and disposal of sources of radiation shall uniquely identify the source of radiation.

(5) [(4)] Copies of records required in accordance with §289.201(d) of this title, and subsections (mm) through (uu) of this section, and by license or certificate of registration condition that are relevant to operations at an additional authorized use/storage site shall be maintained at that site in addition to the main site specified on a license or certificate of registration.

(mm) - (ss) (No change.)

(tt) Records of discharge, treatment, or transfer for disposal.

(1) Each licensee shall maintain records of the discharge or treatment of licensed materials made in accordance with subsection (gg) and (hh) of this section and of transfers for disposal made in accordance with subsection (jj) of this section **and §289.257 of this title**.

(2) (No change.)

(uu) (No change.)

(vv) Form of records. Each record required by this **chapter** [section] shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period or the record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. The licensee or registrant shall maintain adequate safeguards against tampering with and loss of records.

(ww) (No change.)

(xx) Notification of incidents.

(1) Notwithstanding other requirements for notification, each licensee or registrant shall immediately report each event involving a source of radiation possessed by the licensee or registrant that may have caused or threatens to cause:

(A) an individual to receive:

(i) a total effective dose equivalent of 25 rems (0.25 Sv [sievert]) or more;

(ii) an eye dose equivalent of 75 rems (0.75 Sv [sievert]) or more; or

(iii) (No change.)

(B) (No change.)

(2) Each licensee or registrant shall, within 24 hours of discovery of the event, report to the agency each event involving loss of control of a licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or threatens to cause:

(A) an individual to receive, in a period of 24 hours:

(i) a total effective dose equivalent exceeding 5 rems (0.05 Sv [sievert]);

(ii) an eye dose equivalent exceeding 15 rems (0.15 Sv [sievert]); or

(iii) a shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 50 rems (0.5 Sv [sievert]); or

(B) (No change.)

(3) - (5) (No change.)

(yy) - (zz) (No change.)

(aaa) Notifications and reports to individuals.

(1) Requirements for notification and reports to individuals of exposure to **sources of radiation** [radiation or radioactive material] are specified in §289.114 of this title.

(2) When a licensee or registrant is required in accordance with subsection (yy) or (zz) of this section to report to the agency any exposure of an **identified occupationally exposed individual, or an identified member of the public**, to **sources of radiation** [radiation or radioactive material], the licensee or registrant shall also notify the individual and **provide a copy of the report submitted to the agency, to the individual**. Such notice shall be transmitted at a time

not later than the transmittal to the agency, and shall comply with the provisions of 22.13(a) of TRCR Part 22 as adopted by reference in §289.114 of this title.

(bbb) (No change.)

(ccc) Vacating premises.

(1) Each licensee, registrant, or person possessing non-exempt sources of radiation shall, no less than 30 days before vacating or relinquishing possession or control of premises, notify the agency, in writing, of the intent to vacate.

(2) The licensee or person possessing non-exempt radioactive material shall decommission the premises to a degree consistent with subsequent use as an unrestricted area and in accordance with the requirements of subsections (ddd) and (eee) of this section.

(3) **Notwithstanding the limits set forth in subsections (ddd) and (eee) of this section, contamination levels must be maintained in unrestricted areas so that no individual member of the public will receive an effective dose equivalent in excess of 100 mrem (1 mSv) above background per year.**

(4) **No licensee shall vacate a facility or land, or release a facility or land for unrestricted use, until the annual total effective dose equivalent to a member of the public resulting from radioactive material remaining from licensed activities (excluding radium and its decay products) does not exceed 25 mrem (0.25 mSv) per year above background. The concentration for radium in soil shall be equivalent to or below the limits in subsection (eee) of this section. Notwithstanding the limits in this paragraph, each licensee shall make every reasonable effort to maintain any contamination of soil or vegetation ALARA. The licensee shall conduct all necessary radiation surveys and modeling and shall provide reports and documentation to demonstrate that the requirements for release for unrestricted use have been met. The Agency may require the licensee to provide any other information necessary to demonstrate that the facilities and land are suitable for release for unrestricted use.**

(ddd) Soil contamination limits.

(1) No licensee shall possess, receive, use, or transfer radioactive material in such a manner as to cause contamination of soil in unrestricted areas, to the extent that the contamination exceeds, on a dry weight basis, the concentration limits specified in:

(A) subsection (ggg)(8) [(ggg)(9)] of this section; or

(B) the effluent concentrations in Table III of subsection (ggg)(2) of this section, with the units changed from microcuries per milliliter to microcuries per gram, for radionuclides not specified in subsection (ggg)(8) [(ggg)(9)] of this section or paragraph (3) of this subsection.

(2) (No change.)

(3) Except for the requirements in §289.127 of this title and notwithstanding the limits imposed by paragraph (1) of this subsection, the concentration of radium-226 or radium-228 in soil averaged over any 100 square meters (m²) shall not exceed the background level by more than:

(A) **5 picocuries per gram (pCi/g) (0.185 becquerel per gram (Bq/g))** [pCi/gm], averaged over the first 15 cm [centimeters] of soil below the surface; and

(B) 15 pCi/g (0.555 Bq/g) [pCi/gm], averaged over 15 cm [centimeter] thick layers of soil more than 15 cm [centimeters] below the surface.

(4) 5 pCi/g (0.185 Bq/g), based on dry weight, for radium-226 or radium-228 in vegetation; and

(5) the following limits, based on dry weight, averaged over any 100 m² of area for natural uranium with no daughters present:

(A) 30 pCi/g (1.11 Bq/g), averaged over the top 15 cm of soil below the surface; and

(B) 150 pCi/g (5.55 Bq/g), average concentration at depths greater than 15 centimeters below the surface so that no individual member of the public will receive an effective dose equivalent in excess of 100 mrem (1 mSv) per year.

(eee) Surface contamination limits for facilities and equipment.

(1) Prior to vacating any facility or releasing areas or equipment for unrestricted use, each licensee shall ensure that radioactive contamination has been removed to ALARA levels [as low as reasonably achievable]. In no case shall the licensee vacate a facility or release areas or equipment for unrestricted use until radioactive surface contamination levels are below the limits specified in subsection (ggg)(6)[(ggg)(7)] of this section.

(2) In addition to meeting the surface contamination limits of paragraph (1) of this subsection, porous materials (e.g., concrete), that are to be released for unrestricted use, shall be evaluated to determine whether radioactive materials have penetrated to the interior of the material. If radioactive contamination has penetrated into the material, analysis of the average concentration, in pCi/g, shall be made. The material may be released for unrestricted use if the radionuclide concentrations do not exceed the limits specified for soil in subsection (ddd) of this section.

(fff) Exemption of specific wastes.

(1) A licensee may discard the following licensed material without regard to its radioactivity:

(A) 0.05 microcurie (μ Ci) (1.85 kilobecquerels (kBq)), or less, of hydrogen-3, carbon-14, or iodine-125 per gram of medium used for liquid scintillation counting or *in vitro* clinical or *in vitro* laboratory testing; and

(B) 0.05 μ Ci [microcurie] (1.85 kBq [kilobecquerels]), or less, of hydrogen-3, carbon-14, or iodine-125, per gram of animal tissue, averaged over the weight of the entire animal.

(2) - (3) (No change.)

(4) Any licensee may, upon agency approval of procedures required in paragraph (6) of this subsection, discard licensed material included in subsection (ggg)(7) [(ggg)(8)] of this section, provided that it does not exceed the concentration and total curie limits contained therein, in a Type I municipal solid waste site as defined in the Municipal Solid Waste Regulations of the authorized regulatory agency (31 [30] TAC Chapter 330), unless such licensed material also contains hazardous waste, as defined in Section 3(15) of the Solid Waste Disposal Act, Health and Safety Code, Chapter 361. Any licensed material included in subsection (ggg)(7) [(ggg)(8)] of

this section and which is a hazardous waste as defined in the Solid Waste Disposal Act may be discarded at a facility authorized to manage hazardous waste by the authorized regulatory agency.

(5)-(9) (No change.)

(ggg) Appendices.

(1) (No change.)

(2) Annual limits on intake (ALI) and derived air concentrations (DAC) of radionuclides for occupational exposure; effluent concentrations; concentrations for release to sanitary sewerage.

(A) (No change.)

(B) Occupational values.

(i) (No change.)

(ii) The ALIs in subparagraph (F) of this paragraph are the annual intakes of given radionuclide by "Reference Man" that would result in either a committed effective dose equivalent of 5 rems (0.05 Sv [sievert]), stochastic ALI, or a committed dose equivalent of 50 rems (0.5 Sv [sievert]) to an organ or tissue, non-stochastic ALI. The stochastic ALIs were derived to result in a risk, due to irradiation of organs and tissues, comparable to the risk associated with deep dose equivalent to the whole body of 5 rems (0.05 Sv [sievert]). The derivation includes multiplying the committed dose equivalent to an organ or tissue by a weighting factor, w_T . This weighting factor is the proportion of the risk of stochastic effects resulting from irradiation of the organ or tissue, T , to the total risk of stochastic effects when the whole body is irradiated uniformly. The values of w_T are listed under the definition of "weighting factor" in subsection (c) of this section. The non-stochastic ALIs were derived to avoid non-stochastic effects, such as prompt damage to tissue or reduction in organ function.

(iii) - (xii) (No change.)

(C) Effluent concentrations.

(i) The columns in Table II of subparagraph (F) of this paragraph captioned "Effluents," "Air," and "Water" are applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of subsection (o) of this section. The concentration values given in Columns 1 and 2 of Table II of subparagraph (F) of this paragraph are equivalent to the radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce a total effective dose equivalent of 0.05 rem (0.5 mSv [millisievert]).

(ii) (No change.)

(iii) The air concentration values listed in Column I of Table II of subparagraph (F) of this paragraph were derived by one of two methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by 2.4×10^9 , relating the inhalation ALI to the DAC, as explained in subparagraph (B)(viii) of this paragraph, and then divided by a factor of 300. The factor of 300 includes the following components:

(I) a factor of 50 to relate the 5 rems (0.05 Sv [sievert]) annual occupational dose limit to the 0.1 rem limit for members of the public;

(II) - (III) (No change.)

(iv) (No change.)

(v) The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^7 . The factor of 7.3×10^7 **milliliters** (ml) includes the following components:

(I) - (II) (No change.)

(vi) (No change.)

(D) - (F) (No change.)

(3) (No change.)

[(4) Requirements for transfer of low-level radioactive waste for disposal at land disposal facilities and manifests.

[(A) Manifest. The shipment manifest shall contain the name, address, and telephone number of the person generating the waste. The manifest shall also include the name, address, and telephone number or the name and U.S. Environmental Protection Agency hazardous waste identification number of the person transporting the waste to the land disposal facility. The manifest shall also indicate: a physical description of the waste, the volume, radionuclide identity and quantity, the total radioactivity, and the principal chemical form. The solidification agent shall be specified. Waste containing more than 0.1% chelating agents by weight shall be identified and the weight percentage of the chelating agent estimated. Wastes classified as Class A, Class B, or Class C in paragraph (5)(A) of this subsection shall be clearly identified as such in the manifest. The total quantity of the radionuclides hydrogen-3, carbon-14, technetium-99, and iodine-129 shall be shown. The manifest required by this subparagraph may be shipping papers used to meet DOT or EPA regulations or requirements of the receiver, provided all the required information is included. Copies of manifests required by this paragraph may be legible carbon copies or legible photocopies.

[(B) Certification. The waste generator shall include in the shipment manifest a certification that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the DOT and the agency. An authorized representative of the waste generator shall sign and date the manifest.

[(C) Control and tracking.

[(i) Any radioactive waste generator who transfers radioactive waste to a land disposal facility or a licensed waste collector shall comply with the requirements in subclauses (I)-(IX) of this clause. Any radioactive waste generator who transfers waste to a licensed waste processor who treats or repackages waste shall comply with the requirements of subclauses (IV)-(IX) of this clause. A licensee shall:

[(I) prepare all wastes so that the waste is classified according to paragraph (5)(A) of this subsection and meets the waste characteristics requirements in paragraph (5)(B) of this subsection;

[(II) label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with paragraph (5)(A) of this subsection;

[(III) conduct a quality control program to ensure compliance with paragraphs (5)(A) and (B) of this subsection; the program shall include management evaluation of audits;

[(IV) prepare shipping manifests to meet the requirements of subparagraphs (A) and (B) of this paragraph;

[(V) forward a copy of the manifest to the intended recipient, at the time of shipment, or deliver to a collector at the time the waste is collected, obtaining acknowledgment of receipt in the form of a signed copy of the manifest or equivalent documentation from the collector;

[(VI) include one copy of the manifest with the shipment;

[(VII) retain a copy of the manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by §289.252(p) of this title;

[(VIII) for any shipments or any portion of a shipment for which acknowledgment of receipt has not been received within the times set forth in this section, conduct an investigation in clause (v) of this subparagraph; and

[(IX) forward a legible copy of the manifest to the agency at the time of transfer or shipment.

[(ii) Any waste collector licensee who handles only prepackaged waste shall:

[(I) acknowledge receipt of the waste from the generator within one week of receipt by returning a signed copy of the manifest or equivalent documentation;

[(II) prepare a new manifest to reflect consolidated shipments; the new manifest shall serve as a listing or index for the detailed generator manifests. Copies of the generator manifests shall be a part of the new manifest. The waste collector may prepare a new manifest without attaching the generator manifests, provided the new manifest contains for each package the information specified in subparagraph (A) of this paragraph. The collector licensee shall certify that nothing has been done to the waste that would invalidate the generator's certification;

[(III) forward a copy of the new manifest to the land disposal facility operator at the time of shipment;

[(IV) include the new manifest with the shipment to the disposal site;

[(V) retain a copy of the manifest and documentation of acknowledgement of receipt as the record of transfer of licensed material as required by §289.252(p) of this title, and retain information from generator manifest until disposition is authorized by the agency;

[(VI) for any shipments or any portion of a shipment for which acknowledgement of receipt is not received within the times set forth in this paragraph, conduct an investigation in accordance with clause (v) of this subparagraph; and

[(VII) forward a legible copy of the manifest to the agency no later than the date of shipment of the waste to the land disposal facility.

[(iii) Any licensed waste processor who treats or repackages wastes shall:

[(I) acknowledge receipt of the waste from the generator within one week of receipt by returning a signed copy of the manifest or equivalent documentation;

[(II) prepare a new manifest that meets the requirements of subparagraphs (A) and (B) of this paragraph. Preparation of the new manifest reflects that the processor is responsible for the waste;

[(III) prepare all wastes so that the waste is classified according to paragraph (5)(A) of this subsection and meets the waste characteristics requirements in paragraph (5)(B) of this subsection;

[(IV) label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with paragraph (5)(A) and (C) of this subsection;

[(V) conduct a quality control program to ensure compliance with paragraph (5)(A) and (B) of this subsection. The program shall include management evaluation of audits;

[(VI) forward a copy of the new manifest to the disposal site operator or waste collector at the time of shipment, or deliver to a collector at the time the waste is collected, obtaining acknowledgement of receipt in the form of a signed copy of the manifest or equivalent documentation by the collector;

[(VII) include the new manifest with the shipment;

[(VIII) retain copies of original manifests and new manifests and documentation of acknowledgement of receipt as the record of transfer of licensed material required by §289.252(p) of this title;

[(IX) for any shipment or portion of a shipment for which acknowledgement is not received within the times set forth in this section, conduct an investigation in accordance with clause (v) of this subparagraph; and

[(X) forward a legible copy of the manifest to the agency no later than the date of the shipment to the land disposal facility.

[(iv) The land disposal facility operator shall:

[(I) acknowledge receipt of the waste within one week of receipt by returning a signed copy of the manifest or equivalent documentation to the shipper. The shipper to be notified is the licensee who last possessed the waste and transferred the waste to the operator. The returned copy of the manifest or equivalent documentation shall indicate any discrepancies between materials listed on the manifest and materials received;

[(II) maintain copies of all completed manifests or equivalent documentation until the agency authorizes their disposition; and

[(III) notify the shipper, that is, the generator, the collector, or processor, and the agency when any shipment or portion of a shipment has not arrived within 60 days after the advance manifest was received.

[(v) Any shipment or portion of a shipment for which acknowledgement is not received within the times set forth in this section shall:

[(I) be investigated by the shipper if the shipper has not received notification of receipt within 20 days after transfer; and

[(II) be traced and reported. The investigation shall include tracing the shipment and filing a report with the agency. Each licensee who conducts a trace investigation shall file a written report with the agency within 2 weeks of completion of the investigation.]

(4) [(5)] Classification and characteristics of low-level radioactive waste (**LLRW**).

(A) Classification of radioactive waste for land disposal.

(i) Considerations. Determination of the classification of **LLRW** [radioactive waste] involves two considerations. First, consideration must be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration must be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

(ii) Classes of waste.

(I) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste must meet the minimum requirements set forth in subparagraph (B)(i) of this paragraph. If Class A waste also meets the stability requirements set forth in subparagraph (B)(ii) of this paragraph, it is not necessary to segregate the waste for disposal.

(II) Class B waste is waste that must meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste must meet both the minimum and stability requirements set forth in subparagraph (B) of this paragraph.

(III) Class C waste is waste that not only must meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste must meet both the minimum and stability requirements set forth in subparagraph (B) of this paragraph.

(iii) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in subclause (V) of this clause, classification shall be determined as follows.

(I) If the concentration does not exceed 0.1 times the value in subclause (V) of this clause, the waste is Class A.

(II) If the concentration exceeds 0.1 times the value in Table I, but does not exceed the value in subclause (V) of this clause, the waste is Class C.

(III) If the concentration exceeds the value in subclause (V) of this clause, the waste is not generally acceptable for land disposal.

(IV) For wastes containing mixtures of radionuclides listed in subclause (V) of this clause, the total concentration shall be determined by the sum of fractions rule described in clause (vii) of this subparagraph.

(V) Classification table for long-lived radionuclides.

Figure 10: 25 TAC §289.202(ggg)(4)(A)(iii)(V)
[Figure 10: 25 TAC §289.202(ggg)(5)(A)(iii)(V)]

(iv) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in clause (iii)(V) of this subparagraph, classification shall be determined based on the concentrations shown in subclause (VI) of this clause. However, as specified in clause (vi) of this subparagraph, if radioactive waste does not contain any nuclides listed in either clause (iii)(V) of this subparagraph or subclause (VI) of this clause, it is Class A.

(I) If the concentration does not exceed the value in Column 1 of subclause (VI) of this clause, the waste is Class A.

(II) If the concentration exceeds the value in Column 1 of subclause (VI) of this clause but does not exceed the value in Column 2 of subclause (VI) of this clause, the waste is Class B.

(III) If the concentration exceeds the value in Column 2 of subclause (VI) of this clause but does not exceed the value in Column 3 of subclause (VI) of this clause, the waste is Class C.

(IV) If the concentration exceeds the value in Column 3 of subclause (VI) of this clause, the waste is not generally acceptable for near-surface disposal.

(V) For wastes containing mixtures of the radionuclides listed in subclause (VI) of this clause, the total concentration shall be determined by the sum of fractions rule described in clause (vii) of this subparagraph.

(VI) Classification table for short-lived radionuclides.

Figure 11: 25 TAC §289.202(ggg)(4)(A)(iv)(VI)
[Figure 11: 25 TAC §289.202(ggg)(5)(A)(iv)(VI)]

(v) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in clause (iii)(V) of this subparagraph and some of which are listed in clause (iv)(VI) of this subparagraph, classification shall be determined as follows:

(I) If the concentration of a radionuclide listed in clause (iii)(V) of this subparagraph is less than 0.1 times the value listed in clause (iii)(V) of this subparagraph, the class shall be that determined by the concentration of radionuclides listed in clause (iv)(VI) of this subparagraph.

(II) If the concentration of a radionuclide listed in clause (iii)(V) of this subparagraph exceeds 0.1 times the value listed in clause (iii)(V) of this subparagraph, but does not exceed the value listed in clause (iii)(V) of this subparagraph, the waste shall be Class C, provided the concentration of radionuclides listed in clause (iv)(VI) of this subparagraph does not exceed the value shown in Column 3 of clause (iv)(VI) of this subparagraph.

(vi) Classification of wastes with radionuclides other than those listed in clauses (iii)(V) and (iv)(VI) of this subparagraph. If the waste does not contain any radionuclides listed in either clauses (iii)(V) and (iv)(VI) of this subparagraph, it is Class A.

(vii) The sum of the fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits must all be taken from the same column of the same table. The sum of the fractions for the column must be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 50 **curies per cubic meter (Ci/m³)** [Ci/m³ (1.85 **terabecquerels per cubic meter (TBq/m³)** [TBq/m³]) and Cs-137 in a concentration of 22 Ci/m³ (814 **gigabecquerels per cubic meter (GBq/m³)** [GBq/m³]). Since the concentrations both exceed the values in Column 1 of clause (iv)(VI) of this subparagraph, they must be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33, for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is Class B.

(viii) Determination of concentrations in wastes. The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors, which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as nanocurie (becquerel) per gram.

(B) Radioactive waste characteristics.

(i) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site.

(I) Wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restrictive than the provisions of this section, the site license conditions shall govern.

(II) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.

(III) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(IV) Solid waste containing liquid shall contain as little freestanding and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1.0% of the volume.

(V) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(VI) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with subclause (VIII) of this clause.

(VII) Waste must not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.

(VIII) Wastes in a gaseous form shall be packaged at an absolute pressure that does not exceed 1.5 atmospheres at 20 degrees Celsius. Total activity shall not exceed 100 Ci [curies] (3.7 terabecquerels (TBq)) per container.

(IX) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practicable the potential hazard from the non-radiological materials.

(ii) The following requirements are intended to provide stability of the waste. Stability is intended to ensure that the waste does not degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste.

(I) Waste shall have structural stability. A structurally stable waste form will generally maintain its physical dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

(II) Notwithstanding the provisions in clause (i)(III) and (IV) of this subparagraph, liquid wastes, or wastes containing liquid, shall be converted into a form that contains as little freestanding and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1.0% of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5% of the volume of the waste for waste processed to a stable form.

(III) Void spaces within the waste and between the waste and its package shall be reduced to the extent practicable.

(C) Labeling. Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with subparagraph (A) of this paragraph.

(5) [(6)] Time requirements for record keeping.

Figure 12: 25 TAC §289.202(ggg)(5)
[Figure 12: 25 TAC §289.202(ggg)(6)]

(6) [(7)] Acceptable surface contamination levels.

Figure 13: 25 TAC §289.202(ggg)(6)
[Figure 13: 25 TAC §289.202(ggg)(7)]

(7) [(8)] Concentration and activity limits of nuclides for disposal in a Type I municipal solid waste site or a hazardous waste facility (for use in subsection (fff) of this section).

Figure 14: 25 TAC §289.202(ggg)(7)
[Figure 14: 25 TAC §289.202(ggg)(8)]

(8) [(9)] Soil contamination limits for selected radionuclides (for use in subsection (ddd) of this section).

Figure 15: 25 TAC §289.202(ggg)(8)
[Figure 15: 25 TAC §289.202(ggg)(9)]

(9) [(10)] The following, TRC Form 21-2, is to be used to document cumulative occupational exposure history:

Figure 16: 25 TAC §289.202(ggg)(9)
[Figure 16: 25 TAC §289.202(ggg)(10)]

(10) [(11)] The following, TRC Form 21-3, is to be used to document occupational exposure record for a monitoring period:

Figure 17: 25 TAC §289.202(ggg)(10)
[Figure 17: 25 TAC §289.202(ggg)(11)]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712716

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 458-7236

◆ ◆ ◆
25 TAC §289.252, §289.254

The amendments are proposed under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

These amendments affect Health and Safety Code, Chapter 401.

§289.252. *Licensing of Radioactive Material.*

(a) Purpose. This section and §289.115 of this title (relating to Radiation Safety, Requirements and Licensing and Registration Procedures for Industrial Radiography), §289.127 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)), §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgements), [and] §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities), **and §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities)** provide for the licensing of radioactive material. Unless otherwise exempted, no person shall receive, possess, use, transfer, own, or acquire radioactive material except as authorized in a specific license issued in accordance with this section, or as otherwise provided in this section, in a specific license issued in accordance with §§289.115, 289.127, [or] 289.254, **or §289.260** of this title, or in a general license or general license acknowledgement issued in accordance with §289.251 of this title.

(b) Scope. In addition to the requirements of this section, all licensees, unless otherwise specified, are subject to the requirements of §289.112 of this title (relating to Hearing and Enforcement Procedures), [§289.113 of this title (relating To Standards for Protection Against Radiation), and] §289.114 of this title (relating to Notices, Instructions, and Reports to Workers), [§289.126 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.201 of this title (relating to General

Provisions)] **§289.202 of this title (relating to Standards for Protection Against Radiation), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).** Licensees engaged in industrial radiographic operations are subject to the requirements of §289.115 of this title; licensees using sealed sources in the healing arts are subject to the requirements of **§289.256** [§289.117] of this title (relating to Use of Sealed Radioactive Sources in the Healing Arts); and licensees engaged in well logging service operations and tracer studies are subject to the requirements of **§289.253** [§289.120] of this title (relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies).

(c) (No change.)

(d) Filing application for specific licenses.

(1)-(5) (No change.)

(6) Each application for a specific license, other than a license exempted from **§289.204** [§289.126] of this title, shall be accompanied by the fee prescribed in **§289.204** [12.21 of Texas Regulations for Control of Radiation TRCR] Part 12 as adopted by reference in §289.126] of this title.

(7) Each application shall be accompanied by TRC Form **12-2L** [12-2].

(8) (No change.)

(9) Notwithstanding the provisions of **§289.204(e)(1)** [12.11(a) of TRCR Part 12 as adopted by reference in §289.126] of this title, reimbursement of application fees may be granted in the following manner.

(A)-(B) (No change.)

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the **Formal Hearing Procedures** [formal hearing procedures of the Texas Department of Health], §§1.21 - 1.34 of this title (relating to **the Texas Board of Health** [Formal Hearing Procedures]).

(e) (No change.)

(f) Special requirements for issuance of certain specific licenses for radioactive material by specific groups.

(1) (No change.)

(2) Specific licenses for medical uses of radioactive material.

(A) (No change.)

(B) Any licensee who is authorized to use one or more of the medical use groups of radioactive material in accordance with subparagraph (A) of this paragraph and subsection (w)(2) of this section is subject to the following conditions.

(i) For Groups I and II of subsection (w)(2) of this section, no licensee shall receive, possess, or use radioactive material except as a radiopharmaceutical manufactured in the form to be administered to the patient, labeled, packaged, and distributed in accordance with a specific license issued by the agency in accordance

with subsection (h)(10) of this section or by the **United States Nuclear Regulatory Commission (NRC)** [commission], another agreement state, or a licensing state.

(ii) For Group III of subsection (w)(2) of this section, no licensee shall receive, possess, or use generators or reagent kits containing radioactive material [or shall use reagent kits that do not contain radioactive material to prepare radiopharmaceuticals containing radioactive material,] except[:] **those that are manufactured, labeled, packaged, and distributed in accordance with a specific license issued by the agency in accordance with subsection (h)(11) of this section or a specific license issued by the NRC, an agreement state, or a licensing state in accordance with equivalent regulations.**

[(I) reagent kits not containing radioactive material that are approved by the agency, the commission, an agreement state, or a licensing state for use by persons licensed in accordance with this paragraph and subsection (w)(2) of this section or equivalent regulations; and]

[(II) generators or reagent kits containing radioactive material that are manufactured, labeled, packaged, and distributed in accordance with a specific license issued by the agency in accordance with subsection (h)(11) of this section or a specific license issued by the commission, an agreement state, or a licensing state in accordance with equivalent regulations.]

(iii) For Group III of subsection (w)(2) of this section, any licensee who uses generators or reagent kits shall:

(I) elute the generator or process radioactive material with the reagent kit in accordance with instructions that are approved by the agency, the **NRC** [commission], an agreement state, or a licensing state, and furnished by the manufacturer on the label attached to or in the leaflet or brochure that accompanies the generator or reagent kit;

(II) (No change.)

(III) prohibit the administration to patients of technetium-99m containing more than 0.15 microcurie of molybdenum-99 per millicurie (**mCi**) of technetium-99m; and

(IV) (No change.)

[(iv) Except as specified in subparagraph (G) of this paragraph, for uses of radioactive material within Groups I, II, and III of subsection (w)(2) of this section, the licensee shall comply with the product labeling (package insert) specifications and recommendations.]

[(v) For Groups I, II, and III of subsection (w)(2) of this section, any licensee using radioactive material for clinical procedures other than those specified in the product labeling (package insert) shall comply with the product labeling regarding:]

[(I) chemical and physical form;]

[(II) route of administration; and]

[(III) dosage range.]

(C) (No change.)

(D) Any licensee who is licensed in accordance with subparagraph (A) of this paragraph for one or more of the medical use groups in subsection (w)(2) of this section is also authorized, subject

to the provisions of this subparagraph and subparagraph (E) of this paragraph, to receive, possess, and use for calibration and reference standards:

(i) any radioactive material listed in Group I, II, or III of subsection (w)(2) of this section with a half-life not longer than 100 days, in amounts not to exceed 15 **mCi** [millicuries] total;

(ii) any radioactive material listed in Group I, II, or III of subsection (w)(2) of this section with half-life greater than 100 days in amounts not to exceed 200 [microcuries] total;

(iii) technetium-99m in amounts **as required for calibration and testing of laboratory instruments** [not to exceed 30 millicuries]; and

(iv) any radioactive material, in amounts not to exceed 6 **mCi** [millicuries] per source, contained in calibration or reference sources that have been manufactured, labeled, packaged, and distributed in accordance with a specific license issued by the agency in accordance with subsection (h)(7) of this section, a specific license issued by the **NRC** [commission] in accordance with 10 Code of Federal Regulations (CFR) 32.74, or a specific license issued to the manufacturer by an agreement state or a licensing state in accordance with equivalent regulations.

(E) Any licensee [or registrant] who possesses and uses calibration and reference sources in accordance with subparagraph (D)(iv) of this paragraph shall:

(i) follow the radiation safety and handling instructions approved by the agency, the **NRC** [commission], an agreement state, or a licensing state, and furnished by the manufacturer on the label attached to the source, or permanent container thereof, or in the leaflet or brochure that accompanies the source, and maintain such instruction in a legible and conveniently available form; and

(ii) conduct a physical inventory at intervals not to exceed 6 [six] months to account for all sources received and possessed. Records of the inventories shall be maintained for inspection by the agency and shall include the quantities and kinds of radioactive material, source identification numbers, location of sources, [and] the date of the inventory, **and the identification of the individual(s) making the record.**

(F)-(G) (No change.)

(H) Any licensee who processes and prepares radiopharmaceuticals for human use shall do so according to:

(i) instructions that are approved by the agency, the **NRC** [commission], an agreement state, or a licensing state that are furnished by the manufacturer on the label attached to **or in the FDA-accepted instructions in the leaflet or brochure that accompanies** the [a] generator or reagent kit [, or contained in the accompanying leaflet or brochure];

(ii)-(iii) (No change.)

(I) If the authorized nuclear pharmacist elutes generators or processes radioactive material with the reagent kit in a manner that deviates from instructions furnished by the manufacturer on the label attached to **or in the leaflet or brochure that accompanies** the generator or reagent kit or in the accompanying leaflet or brochure, a complete description of the deviation shall be made and maintained for inspection by the agency for a period of 3 [three] years.

(3) Release of patients containing radiopharmaceuticals, temporary implants, or permanent implants.

(A) Any individual to whom more than 30 **mCi** [millicuries] of a radiopharmaceutical is administered shall be confined to an agency-approved inpatient facility and shall not be released from confinement until the activity of the administered radiopharmaceutical in the patient is less than 30 **mCi** [millicuries], or until the measured dose rate from the patient is less than 5 millirems per hour (**mrem/hr**) at a distance of 1 meter (**m**).

(B) (No change.)

(C) Any individual containing permanent implant sources shall remain hospitalized and shall not be released from confinement until the exposure rate from the patient is less than 5 [6] milliroentgens per hour at a distance of 1 meter from the implant location.

(4)-(6) (No change.)

(g) (No change.)

(h) Special requirements for a specific license to manufacture, assemble, repair, or commercially distribute commodities, products, or devices that contain radioactive material.

(1) (No change.)

(2) Commercial distribution of radioactive material in exempt quantities.

(A)-(B) (No change.)

(C) The license issued in accordance with subparagraph (B) of this paragraph is subject to the following conditions.

(i) (No change.)

(ii) Each exempt quantity shall be separately and individually packaged. No more than ten such packaged exempt quantities shall be contained in any other package for commercial distribution to persons exempt from this chapter in accordance with §289.251(d)(2) of this title. The outer package shall be such that the dose rate at the external surface of the package does not exceed 0.5 **mrem/hr** [millirem per hour].

(iii)-(iv) (No change.)

(D) (No change.)

(3) Incorporation of **naturally occurring or accelerator-produced radioactive material (NARM)** [NARM] into gas and aerosol detectors. In addition to the requirements set forth in subsection (e) of this section, an application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt from this chapter in accordance with §289.251(d)(3)(C) of this title will be approved if the application satisfies requirements equivalent to those contained in 10 CFR 32.26. The maximum quantity of radium-226 in each device shall not exceed 0.1 [microcurie].

(4) Licensing the manufacture and commercial distribution of devices to persons generally licensed in accordance with §289.251(j)(1) of this title.

(A) An application for a specific license to manufacture or commercially distribute devices containing radioactive material to persons generally licensed in accordance with

§289.251(g)(1)(C) and (j)(1) of this title or equivalent regulations of the **NRC** [commission], an agreement state, or a licensing state will be approved if:

(i) (No change.)

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(I) (No change.)

(II) under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in any period of **1** [one] year a dose in excess of 10% of the limits specified in **§289.202(f)** [21.201 of TRCR Part 21 as adopted by reference in §289.113] of this title; and

(III) under accident conditions (such as fire and explosion) associated with handling, storage, and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the following organ doses:

(-a-) (No change.)

(-b-) 200 rems to the hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than **1** [one] square centimeter (**cm²**);

(-c-) (No change.)

(iii) each device bears a durable, legible, clearly visible label or labels approved by the agency, which contain in a clearly identified and separate statement:

(I)-(II) (No change.)

(III) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(-a-) For radioactive materials other than NARM, the following statement is appropriate:

Figure 1: 25 TAC §289.252(h)(4)(A)(iii)(III)(-a-)

(-b-)(-c-) (No change.)

(B) In the event the applicant desires that the device be required to be tested at intervals longer than **6** [six] months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices and by design features that have a significant bearing on the probability or consequences of radioactive material leakage from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for radioactive material leakage, the agency will consider information that includes, but is not limited to:

(i)-(x) (No change.)

(C) In the event the applicant desires that the general licensee in accordance with §289.251(g)(1)(C) and (j)(1) of this title or in accordance with equivalent regulations of the **NRC** [commission], an agreement state, or a licensing state be authorized to mount the device, collect the sample to be analyzed by a specific

licensee for radioactive material leakage, perform maintenance of the device consisting of replacement of labels, rust and corrosion prevention, and for fixed gauges, repair and maintenance of source holder mounting brackets, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated annual doses associated with such activity or activities, and bases for such estimates. The submitted information shall demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices in accordance with the general license, is unlikely to cause that individual to receive an annual dose in excess of 10% of the limits specified in **§289.202(f)** [21.201 of TRCR Part 21 as adopted by reference in §289.113] of this title.

(D) Each person licensed in accordance with this subparagraph to commercially distribute devices to generally licensed persons shall:

(i) (No change.)

(ii) furnish a copy of the general license in the **NRC's** [commission's], agreement state's, or licensing state's regulation equivalent to §289.251(g)(1)(C) and (j)(1) of this title, or alternatively, furnish a copy of the general license in §289.251(g)(1)(C) and (j)(1) of this title to each person to whom the licensee directly or through an intermediate person commercially distributes radioactive material in a device for use in accordance with the general license of the **NRC** [commission], the agreement state, or the licensing state. If a copy of the general license in §289.251(g)(1)(C) and (j)(1) of this title is furnished to such a person, it shall be accompanied by an explanation that the use of the device is regulated by the **NRC** [commission], agreement state, or licensing state in accordance with requirements substantially the same as those in §289.251(g)(1)(C) and (j)(1) of this title;

(iii) (No change.)

(iv) report to the **NRC** [commission] all commercial distributions of such devices to persons for use in accordance with the **NRC** [commission] general license in 10 CFR 31.5;

(v)-(vi) (No change.)

(vii) report to the **NRC** [commission] information indicating no commercial distributions have been made to the **NRC** [commission] licensees during the reporting period if no such commercial distributions have been made; and

(viii) keep records showing the name, address, and the point of contact for each general licensee to whom the licensee directly or through an intermediate person commercially distributes radioactive material in devices for use in accordance with the general license provided in §289.251(g)(1)(C) and (j)(1) of this title, or equivalent regulations of the **NRC** [commission], an agreement state, or a licensing state. The records should show the date of each commercial distribution, the isotope and the quantity of radioactivity in each device commercially distributed, the identity of any intermediate person, and compliance with the reporting requirements of this subparagraph.

(5)-(6) (No change.)

(7) Manufacture and commercial distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and commercially

distribute sources and devices containing radioactive material to persons licensed for use of sealed sources in the healing arts or in accordance with subsection (f)(2) of this section for use as a calibration or reference source will be approved if:

(A)-(B) (No change.)

(C) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity, and date of assay, and a statement that the name of the source or device is licensed by the agency for commercial distribution to persons licensed for use of sealed sources in the healing arts or in accordance with subsection (f)(2) of this section or equivalent licenses of the **NRC** [commission], an agreement state, or a licensing state, provided that such labeling for sources that do not require long-term storage may be on a leaflet or brochure that accompanies the source;

(D)-(E) (No change.)

(8) Manufacture and commercial distribution of radioactive material for certain *in vitro* clinical or laboratory testing in accordance with the general license. An application for a specific license to manufacture or commercially distribute radioactive material for use in accordance with the general license in §289.251(j)(2) of this title will be approved if:

(A) (No change.)

(B) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding 10 μ Ci [microcuries] each;

(ii) iodine-131 in units not exceeding 10 μ Ci [microcuries] each;

(iii) carbon-14 in units not exceeding 10 μ Ci [microcuries] each;

(iv) hydrogen-3 (tritium) in units not exceeding 50 μ Ci [microcuries] each;

(v) iron-59 in units not exceeding 20 μ Ci [microcuries] each;

(vi) cobalt-57 in units not exceeding 10 μ Ci [microcuries] each;

(vii) selenium-75 in units not exceeding 10 μ Ci [microcuries] each; or

(viii) mock iodine-125 in units not exceeding 0.05 μ Ci [microcuries] of iodine-129 and 0.005 μ Ci [microcurie] of americium-241 each;

(C) each prepackaged unit bears a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 10 μ Ci [microcuries] of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 50 μ Ci [microcuries] of hydrogen-3 (tritium); 20 μ Ci [microcuries] of iron-59; or mock iodine-125 in units not exceeding 0.05 μ Ci [microcuries] of iodine-129 and 0.005 μ Ci [microcuries] of americium-241; and

(ii) displaying the radiation caution symbol in accordance with **§289.202(ee)(1) and (ee)(2)** [21.901(a) and (b) of TRCR Part 21 as adopted by reference in §289.113] of this title and the words, "CAUTION, RADIOACTIVE MATERIAL," and "Not for Internal or External Use in Humans or Animals";

(D) one of the following statements, as appropriate, or a substantially similar statement that contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure that accompanies the package:

(i) option 1:

Figure 3: 25 TAC §289.252(h)(8)(D)(i)

(ii) (No change.)

(E) the label affixed to the unit, or the leaflet or brochure that accompanies the package, contains adequate information as to the precautions to be observed in handling and storing such radioactive material. In the case of a mock iodine-125 reference or calibration source, the information accompanying the source must also contain directions to the licensee regarding the waste disposal requirements of **§289.202(ff)** [21.1001 of TRCR Part 21 as adopted by reference in §289.113] of this title.

(9)-(10) (No change.)

(11) Manufacture and commercial distribution of generators or reagent kits for preparation of radiopharmaceuticals containing radioactive material.

(A) An application for a specific license to manufacture and commercially distribute generators or reagent kits containing radioactive material for preparation of radiopharmaceuticals by persons licensed in accordance with subsection (f)(2) of this section for the medical uses listed in Group III defined in subsection (w)(2) of this section will be approved if:

(i)-(iv) (No change.)

(v) the label affixed to the generator or reagent kit, or the leaflet or brochure that accompanies the generator or reagent kit contains:

(I) (No change.)

(II) a statement that this generator or reagent kit (as appropriate) is approved for use by persons licensed by the agency in accordance with subsection (f)(2) of this section and for the medical uses listed in Group III defined in subsection (w)(2) of this section or in accordance with equivalent licenses of the **NRC** [commission], an agreement state, or a licensing state.

(B) (No change.)

[(C) Although the agency does not regulate the manufacture and commercial distribution of reagent kits that do not contain radioactive material, it does regulate the use of such reagent kits for the preparation of radiopharmaceuticals containing radioactive material as part of its licensing and regulation of the users of radioactive material. Any manufacturer of reagent kits that do not contain radioactive material who desires to have the reagent kits approved by the agency for use by persons licensed in accordance with subsection (f)(2) of this section and for the medical uses in Group III defined in subsection (w)(2) of this section should submit the pertinent information specified in this paragraph.]

(12) Manufacture and commercial distribution of products containing depleted uranium for mass-volume applications.

(A) An application for a specific license to manufacture products and devices containing depleted uranium for use in accordance with §289.251(f)(5) of this title or equivalent regulations of the **NRC** [commission] or an agreement state, will be approved if:

(i) (No change.)

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the product or device to provide reasonable assurance that possession, use, or commercial distribution of the depleted uranium in the product or device is not likely to cause any individual to receive in any period of **1** [one] year a radiation dose in excess of 10% of the limits specified in **§289.202(f)** [21.201 of TRCR Part 21 as adopted by reference in §289.113] of this title; and

(iii) (No change.)

(B)-(C) (No change.)

(D) Each person licensed in accordance with subparagraph (A) of this paragraph shall:

(i) (No change.)

(ii) label or mark each unit to:

(I) (No change.)

(II) state that the receipt, possession, use, and commercial distribution of the product or device are subject to a general license or the equivalent and the regulations of the **NRC** [commission] or of an agreement state;

(iii) (No change.)

(iv) furnish a copy of the general license in:

(I) (No change.)

(II) the **NRC's** [commission's] or agreement state's regulation equivalent to the general license in §289.251(f)(5) of this title and a copy of the **NRC's** [commission's] or agreement state's certificate, or alternatively, furnish a copy of the general license in §289.251(f)(5) of this title to each person to whom the licensee commercially distributes depleted uranium in a product or device for use in accordance with the general license of the **NRC** [commission] or an agreement state;

(v) (No change.)

(vi) report to the **NRC** [commission] and each responsible agreement state agency all commercial distributions of industrial products or devices to persons for use in accordance with the general license in the **NRC's** [commission's] or agreement state's equivalent rule to §289.251(f)(5) of this title. Such report shall meet the provisions of clause (v) of this subparagraph; and

(vii) keep records showing the name, address, and point of contact for each general licensee to whom the licensee commercially distributes depleted uranium in products or devices for use in accordance with the general license provided in §289.251(f)(5) of this title or equivalent regulations of the **NRC** [commission] or of an agreement state. The records shall be maintained for a

period of **2** [two] years and shall show the date of each commercial distribution, the quantity of depleted uranium in each product or device commercially distributed, and compliance with the report requirements of this section.

(13)-(14) (No change.)

(i) Sealed source or device evaluation. No sealed source or device containing radioactive material shall be authorized on a specific license or general license until radiation safety information for that sealed source or device has been evaluated by the agency, the **NRC** [commission], another agreement state, or a licensing state.

(1)-(6) (No change.)

(j) Issuance of specific licenses.

(1) Upon a determination that an application meets the requirements of the **Texas Radiation Control Act (Act)** [Act] and the rules of the agency, the agency will issue a specific license authorizing the proposed activity in such form and containing such conditions and limitations as it deems appropriate or necessary.

(2) (No change.)

(k) (No change.)

(l) Expiration and termination of licenses **and decommissioning of sites and separate buildings or outdoor areas.**

(1)-(3) (No change.)

(4) If a licensee does not submit an application for license renewal in accordance with subsection (m) of this section, the licensee shall on or before the expiration date specified in the license:

(A)-(B) (No change.)

(C) submit a record of disposal of radioactive material and radiation survey(s) of the licensee's permanent location(s) of use and/or storage. Levels of radiation shall be reported in units as required by **§289.202 (ddd) and (eee)** [21.1302 or 21.1303 of TRCR Part 21 as adopted by reference in §289.113] of this title. The survey or measurement instrument(s) used for conducting the survey shall be specified; and

(D) pay any outstanding fees in accordance with **§289.204** [289.126] of this title and resolve any outstanding notices of violations of this chapter or of license conditions.

(5) (No change.)

(6) If radiation levels or radioactive material in excess of the limits of **§289.202 (ddd) and/or (eee)** [21.1302 or 21.1303 of TRCR Part 21 as adopted by reference in §289.113] of this title are found, the license continues in effect beyond the expiration date, if necessary, with respect to possession of residual radioactive material until the agency notifies the licensee in writing that the license is terminated. During this time, the licensee is subject to the provisions of paragraph (13) of this subsection. In addition to the information submitted in accordance with paragraph (4)(C) of this subsection, the licensee shall submit a plan, if appropriate, for decontaminating the location(s).

(7) **Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the agency in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building and/or outdoor area is suitable for release**

in accordance with §289.202(ddd) and/or (eee) of this title, or submit within 12 months of notification a decommissioning plan, if required by paragraph (10) of this subsection, and begin decommissioning upon approval of that plan:

(A) the license has expired in accordance with subsection (l) of this section or subsection (q)(3) of this section; or

(B) the licensee has decided to permanently cease principal activities, as defined in §289.201(b)(70) of this title, at the entire site or in any separate building or outdoor area; or

(C) no principal activities under the license have been conducted for a period of 24 months; or

(D) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with §289.202(ddd) and/or (eee) of this title.

(8) Coincident with the notification required by paragraph (7) of this subsection, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee in accordance with subsection (u) of this section in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established in accordance with paragraph (13)(D) of this subsection.

(A) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so by (the effective date of this section).

(B) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the agency.

(9) The agency may grant a request to delay or postpone initiation of the decommissioning process if the agency determines that such relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification in accordance with paragraph (7) of this subsection. The schedule for decommissioning set forth in paragraph (7) of this subsection may not commence until the agency has made a determination on the request.

(10) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(A) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(B) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(11) The agency may approve an alternate schedule for submittal of a decommissioning plan required in accordance with paragraph (7) of this subsection if the agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(12) The procedures listed in paragraph (10) of this subsection may not be carried out prior to approval of the decommissioning plan.

(13) The proposed decommissioning plan for the site or separate building or outdoor area must include the following:

(A) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(B) a description of planned decommissioning activities;

(C) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(D) a description of the planned final radiation survey;

(E) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning; and

(F) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (15) of this subsection.

(14) The proposed decommissioning plan will be approved by the agency if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(15) Except as provided in this paragraph, licensees shall complete decommissioning of the site or separate building or outdoor areas as soon as practicable but no later than 24 months following the initiation of decommissioning.

(16) Except as provided in paragraph (15) of this subsection, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(17) The agency may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination

if appropriate, if the agency determines that the alternative is warranted by consideration of the following:

(A) whether it is technically feasible to complete decommissioning within the allotted 24 month period;

(B) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24 month period;

(C) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(D) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(E) other site-specific factors which the agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(18) As the final step in decommissioning, the licensee shall do the following:

(A) certify the disposition of all licensed material, including accumulated wastes; and

(B) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall do the following, as appropriate:

(i) report levels of gamma radiation in units of millisieverts per hour (mSv/hr) (microroentgen per hour (μ R/hr)) at 1 m from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (MBq) (disintegrations per minute (dpm) or μ Ci) per 100 cm² removable and fixed for surfaces, MBq (μ Ci) per milliliter (ml) for water, and becquerels (Bq) (picocuries (pCi)) per gram (g) for solids such as soils or concrete; and

(ii) specify the make and model number of survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(19) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the agency determines that:

(A) source material has been properly disposed;

(B) reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(C) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with §289.202(ddd) and/or (eee) of this title or other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with §289.202(ddd) and/or (eee) of this title.

(20) [(7)] If the licensee does not submit an application for license renewal in accordance with subsection (m) of this section, in addition to the information required in accordance with paragraph (4)(C) of this subsection, the licensee shall submit a plan for completion of decommissioning if the procedures necessary to carry out decommissioning have not been previously approved by the agency and could increase potential health and safety impacts to workers or to the public such as in any of the following cases:

(A) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(B) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(21) [(8)] Procedures with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan by the agency.

(22) [(9)] The proposed decommissioning plan, if required by paragraph (20) [(7)] of this subsection or by license condition, must include:

(A) a description of planned decommissioning activities;

(B) a description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning;

(C) a description of the planned final radiation survey; and

(D) an updated, detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning.

(23) [(10)] The proposed decommissioning plan will be approved by the agency if the information therein demonstrates that the decommissioning will be completed as soon as is reasonable and that the health and safety of workers and the public will be adequately protected.

(24) [(11)] Upon approval of the decommissioning plan by the agency, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (4)(C) of this subsection.

(25) [(12)] If the information submitted in accordance with paragraphs (4)(C) or (24) [(11)] of this subsection does not adequately demonstrate that the premises are suitable for release for unrestricted use, the agency will inform the licensee of the appropriate further actions required for termination of license.

(26) [(13)] Each licensee who possesses residual radioactive material in accordance with paragraph (6) of this subsection, following the expiration date specified in the license, shall:

(A) be limited to actions, involving radioactive material, related to preparing the location(s) for release for unrestricted use; and

(B) continue to control entry to restricted areas until the location(s) are suitable for release for unrestricted use and the agency notifies the licensee in writing that the license is terminated.

(27) [(14)] Each licensee shall submit to the agency all records required by **§289.202(nn)(2)** [21.1103(b) of TRCR Part 21 as adopted by reference in §289.113] of this title before the license is terminated.

(m) Renewal of license.

(1) (No change.)

(2) In any case in which a licensee, not less than 30 days prior to expiration of an existing license, has filed a request in proper form for renewal or for a new license authorizing the same activities, such existing license shall not expire until the request has been finally determined by the agency. **In any case in which a licensee, not more than 90 days after the expiration of an existing license, has filed a request in proper form for renewal or for a new license authorizing the same activities, the agency may reinstate the license and extend the expiration until the request has been finally determined by the agency.**

(n)-(o) (No change.)

(p) Transfer of material.

(1) (No change.)

(2) Except as otherwise provided in a license and subject to the provisions of paragraphs (3) and (4) of this subsection, any licensee may transfer radioactive material:

(A)-(C) (No change.)

(D) to any person authorized to receive such material in accordance with the terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the agency, the **NRC** [commission], any agreement state, or any licensing state, or to any person otherwise authorized to receive such material by the Federal government or any agency thereof, the agency, any agreement state, or any licensing state; or

(E) (No change.)

(3) Before transferring radioactive material to a specific licensee of the agency, the **NRC** [commission], an agreement state, or a licensing state, or to a general licensee who is required to register with the agency, the **NRC** [commission], an agreement state, or a licensing state prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by paragraph (3) of this subsection are acceptable.

(A)-(C) (No change.)

(D) The transferor may obtain other sources of information compiled by a reporting service from official records of the agency, the **NRC** [commission], or the licensing agency of an agreement state or a licensing state as to the identity of licensees and the scope and expiration dates of licenses and registrations.

(E) When none of the methods of verification described in subparagraphs(A) through (D) of this paragraph are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the agency, the **NRC** [commission], or the licensing agency of an agreement state or a licensing state that the transferee is licensed to receive the radioactive material.

(5) (No change.)

(q) Modification and revocation of licenses.

(1)-(2) (No change.)

(3) Each specific license revoked by the agency expires at the end of the day on the date of the agency's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by the agency order.

(4) [(3)] Except in cases of willfulness or those in which the public health, interest or safety requires otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been accorded an opportunity to demonstrate or achieve compliance with all lawful requirements.

(r) Notification of incidents.

(1) Immediate report. Each licensee shall notify the agency as soon as possible but not later than **4** [four] hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radioactive materials that could exceed regulatory limits or releases of radioactive materials that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

(2) Twenty-four hour report. Each licensee shall notify the agency within 24 hours after the discovery of any of the following events involving radioactive material:

(A) an unplanned contamination event that:

(i) (No change.)

(ii) involves a quantity of material greater than five times the lowest annual limit on intake specified in **§289.202(ggg)(2)** [Appendix 21-B of TRCR Part 21 as adopted by reference in §289.113] of this title for the material; and

(iii) (No change.)

(B)-(C) (No change.)

(D) an unplanned fire or explosion damaging any radioactive material or any device, container, or equipment containing radioactive material when:

(i) the quantity of material involved is greater than five times the lowest annual limit on intake specified in **§289.202(ggg)(2)** [Appendix 21-B of TRCR Part 21 as adopted by reference in §289.113] of this title for the material; and

(ii) (No change.)

(3) (No change.)

(s) Reciprocal recognition of licenses.

(1) Subject to this section, any person who holds a specific license from the **NRC** [commission], any agreement state, or any licensing state, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in such licensing document within the state of Texas provided that:

(A) (No change.)

(B) the out-of-state licensee notifies the agency in writing at least **3** [three] working days prior to engaging in such activity. If, for a specific case, the **3** [three] working-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the agency, obtain permission to proceed sooner. The agency may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities in accordance with the general license provided in this subsection. Such notification shall include:

(i)-(v) (No change.)

(vi) an annual fee as specified in **§289.204(e)(7)** 12.11(c) of TRCR Part 12 as adopted by reference in §289.126] of this title.

(C)-(D) (No change.)

(E) the out-of-state licensee shall not transfer or dispose of radioactive material possessed or used in accordance with the general license provided in this section except by transfer to a person:

(i) specifically licensed by the agency, the **NRC** [commission], another agreement state, or another licensing state to receive such material, or

(ii) (No change.)

(2) In addition to the provisions of paragraph (1) of this subsection, any person who holds a specific license issued by the **NRC** commission], an agreement state, or a licensing state authorizing the holder to manufacture, transfer, install, or service a device described in §289.251 (g)(1)(C) and (j)(1) of this title, within areas subject to the jurisdiction of the licensing body, is hereby granted a general license to install, transfer, demonstrate, or service such a device in the state of Texas provided that:

(A)-(D) (No change.)

(3) (No change.)

(t) Preparation of radioactive material for transport.

(1) No licensee shall deliver any radioactive material to a carrier for transport, unless:

(A)-(B) (No change.)

[C] prior to delivery of a package to a carrier for transport, the licensee shall assure that any special instructions needed to safely open the package are sent to, or have been made available to, the consignee.]

(2) For the purpose of this subsection, licensees who transport their own licensed material as private carriers are considered to have delivered such material to a carrier for transport.

(u) Financial assurance and record keeping for decommissioning.

(1)-(5) (No change.)

(6) Financial assurance for decommissioning must be provided by one or more of the following methods.

(A) (No change.)

(B) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid [should the licensee default]. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (w)(3) of this section. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. **A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (w)(3) of this section. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company.** Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions.

(i) The surety method or insurance must be opened or, if written for a specified term, such as **5** [five] years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the agency, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the agency within 30 days after receipt of notification of cancellation.

(ii)-(iii) (No change.)

(C)-(D) (No change.)

(7) Each person licensed in accordance with this section shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the agency. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the agency considers important to decommissioning consists of **the following**:

(A) (No change.)

(B) as-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes that may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations; [and]

(C) **except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or byproduct materials having only half-**

lives of less than 65 days, a list contained in a single document and updated every two years, of the following:

(i) all areas outside of restricted areas that require documentation under subparagraph (A) of this paragraph; and

(ii) all areas outside of restricted areas where current and previous wastes have been buried as documented in accordance with §289.202(tt) of this title; and

(D) [(C)] records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(v) Emergency plan for responding to a release.

(1) A new or renewal [an] application for each specific license to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in subsection (w)(4) of this section must contain either:

(A)-(B) (No change.)

(2)-(4) (No change.)

(w) Appendices.

(1)-(2) (No change.)

(3) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(A) (No change.)

(B) Financial test.

(i) To pass the financial test, the parent company must meet the criteria of either subclause (I) or (II) of this clause.

(I) The parent company must have:

(-a-)-(-c-) (No change.)

(-d-) assets located in the United States amounting to at least 90% [percent] of total assets or at least six times the current decommissioning cost estimates (or prescribed amount if a certification is used.)

(II) The parent company must have:

(-a-)-(-c-) (No change.)

(-d-) assets located in the United States amounting to at least 90% [percent] of total assets or at least six times the current decommissioning cost estimates (or prescribed amount if certification is used).

(ii)-(iv) (No change.)

(C) (No change.)

(4) Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release.

Figure 5: 25 TAC §289.252(w)(4)
[Figure 5: 25 TAC §289.252(w)(4)]

(5) Acceptable training and experience for medical uses of radioactive material.

(A) Training for uptake, dilution, and excretion studies.

(i) The licensee shall require the authorized user of a radiopharmaceutical listed in Group I of subsection (w)(2) of this section, to be a physician who:

(I) (No change.)

(II) has successfully completed classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals and supervised clinical experience as follows:

(-a-)-(-b-) (No change.)

(-c-) has successfully completed a **6-month** [six-month] training program in nuclear medicine as part of a residency program that has been accredited by the Accreditation Council for Graduate Medical Education (ACGME) or the Council on Postdoctoral Training of the American Osteopathic Association (COPT-AOA) and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in this subclause.

(ii)-(iii) (No change.)

(B) Training for imaging and localization studies.

(i) The licensee shall require the authorized user of a radiopharmaceutical, generator, or reagent kit listed in Groups II and III of paragraph (2)(B) and (C) of this subsection, to be a physician who:

(I) (No change.)

(II) has successfully completed classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, supervised work experience, and supervised clinical experience as follows:

(-a-)-(-c-) (No change.)

(-d-) has successfully completed a **6-month** [six-month] training program in nuclear medicine as part of a residency program that has been accredited by the ACGME or the COPT-AOA and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in this subclause.

(ii) (No change.)

(iii) Classroom and laboratory training identified in clause (i)(II)(-a-) of this subparagraph that was initiated before October 1, 1995 and completed by October 1, 1997 will be accepted if it is obtained in an accredited medical school, a federal teaching hospital, or a training program for medical use of radioactive material that has been accepted by the agency, NRC [the commission], or another agreement state.

(iv) (No change.)

(C) Training for the therapeutic use of radiopharmaceuticals.

(i) The licensee shall require the authorized user of radiopharmaceuticals for therapeutic use to be a physician who:

(I) (No change.)

(II) has classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals and supervised clinical experience as follows:

(-a-) (No change.)

(-b-) supervised clinical experience under the supervision of an authorized physician user for the type of therapy authorization requested from the following list:

(-1-)-(-6-) (No change.)

(-7-) has successfully completed a **6-month** [six-month] training program in nuclear medicine as part of a residency program that has been accredited by the ACGME or the COPT-AOA and that included classroom and laboratory training, work experience and supervised clinical experience in all the topics identified in this subclause.

(ii) (No change.)

(D) Training for use of brachytherapy sources (except for beta applicators - See subparagraph (E) of this paragraph).

(i) The licensee shall require the authorized user of a brachytherapy source to be a physician who:

(I) (No change.)

(II) is in the active practice of therapeutic radiology, has had classroom training in radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources, and supervised clinical experience as follows:

(-a-)-(-c-) (No change.)

(ii) (No change.)

(E) (No change.)

(F) Training for use of sealed sources for diagnosis.

(i) The licensee shall require the authorized user of a sealed source in the devices listed in clause (ii) of this subparagraph, to be a physician, dentist, or podiatrist who:

(I) (No change.)

(II) has had **8** [eight] hours of classroom and laboratory training in radioisotope handling techniques specifically applicable to the use of the device that includes:

(-a-)-(-d-) (No change.)

(ii)-(iii) (No change.)

(G) Training for teletherapy.

(i) The licensee shall require the authorized user of a sealed source in a teletherapy unit to be a physician who:

(I) (No change.)

(II) is in the active practice of therapeutic radiology, and has had classroom and laboratory training in basic radioisotope techniques applicable to the use of a sealed source in a teletherapy unit, supervised work experience, and supervised clinical experience as follows:

(-a-)-(-c-) (No change.)

(ii) (No change.)

(H) Training for experienced authorized users. Physicians, dentists, or podiatrists identified as authorized users for the medical, dental, or podiatric use of radioactive material on a **NRC** [commission] or agreement state license issued before September 1, 1993 and those issued by the agency before October 1, 1995 [(the effective date of this section)] who perform only those methods of

use for which they were authorized on that date need not comply with the training requirements in this paragraph.

(I) Recentness of training.

(i)-(ii) (No change.)

(6) (No change.)

(7) **Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.**

(A) **Introduction.** An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes a financial test of subparagraph (B) of this paragraph. Subparagraph (B) of this paragraph establishes criteria for passing the financial test for the self guarantee and establishes the terms for a self guarantee.

(B) **Financial test.**

(i) **To pass the financial test, a company must meet all of the following criteria:**

(I) **tangible net worth at least ten times the total current decommissioning cost estimate (or the current amount required if certification is used for all decommissioning activities for which the company is responsible as self guaranteeing licensee and as parent-guarantor);**

(II) **assets located in the United States amounting to at least 90% of total assets or at least ten times the total current decommissioning cost estimate (or the current amount required if certification is used for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor); and**

(III) **a current rating for its most recent bond issuance of AAA, AA, A as issued by Standard and Poor's, or Aaa, Aa, A as issued by Moody's.**

(ii) **To pass the financial test, a company must meet all of the following additional requirements:**

(I) **the company must have at least one class of equity securities registered under the Securities Exchange Act of 1934.**

(II) **the company's independent certified public accountant must have compared the data used by the company in the financial test which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters coming to the auditor's attention that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; and**

(III) **after the initial financial test, the company must repeat the passage of the test within 90 days after the close of each succeeding fiscal year.**

(iii) **If the licensee no longer meets the requirements of clause (i) of this subparagraph, the licensee must send**

immediate notice to the agency of its intent to establish alternate financial assurance as specified in the NRC's regulations within 120 days of such notice.

(C) **Company self guarantee.** The terms of a self guarantee which an applicant or licensee furnishes must provide that:

(i) the company guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the agency, as evidenced by the return receipt;

(ii) the licensee shall provide alternate financial assurance as specified in the agency's regulations within 90 days following receipt by the agency of a notice of cancellation of the guarantee;

(iii) the guarantee and financial test provisions must remain in effect until the agency has terminated the license or until another financial assurance method acceptable to the agency has been put in effect by the licensee;

(iv) the licensee will promptly forward to the agency and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission in accordance with the requirements of the Securities and Exchange Act of 1934, §13;

(v) if, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee will provide notice in writing of such fact to the agency within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of subparagraph (B)(i) of this paragraph; and

(vi) the applicant or licensee must provide to the agency a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

§289.254. *Licensing of Radioactive Waste Processing And Storage Facilities.*

(a) Purpose and scope.

(1) (No change.)

(2) Except as otherwise provided, this section applies to all persons who transport, receive, possess, store, or process radioactive waste from other persons. In addition to the requirements of this section, all licensees, unless otherwise specified, are subject to the requirements of §289.112 of this title (relating to Hearing and Enforcement Procedures), [§289.113 of this title (relating to Standards for Protection Against Radiation)], §289.114 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), [§289.126 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services).] §289.201 of this title (relating to General Provisions), **§289.202 of this title (relating to Standards for Protection Against Radiation)**, **§289.204 of this title (relating**

to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.252 of this title (relating to Licensing of Radioactive Material) , **and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).**

(b) Definitions. The following words and terms when used in this section shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commencement of major construction—Any major structural erection or major alterations to existing structures, or other substantial action that would change the facility design or site for the purpose of establishing a radioactive waste processing or storage facility. The term does not mean the acquisition of existing structures or minor changes thereto.

(2) Decommissioning—The final activities carried out at a radioactive waste processing or storage site after completion of processing operations to remove safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and/or termination of the license. Such activities shall include:

(A) disposing of all radioactive waste at a licensed radioactive waste disposal site;

(B) dismantling or decontaminating site structures;

(C) decontaminating site surfaces and remaining equipment; and

(D) conducting final closure surveys, decontamination, and reclamation of the site.

(3) Disposal—Isolation or removal of radioactive wastes from mankind and his environment. The term does not include emissions and discharges under rules of the agency.

(4) Engineered barriers—Man-made devices to contain or limit the potential movement of radioactive material, which might result from spills or other accidents.

(5) Floodplain—The lowland and relatively flat areas adjoining inland and coastal waters, including flood prone areas of off-shore islands.

(6) Local government—A county, an incorporated city or town, a special district, or other political subdivision of the state.

(7) Major aquifer—An aquifer which yields large quantities of water in a comparatively large area of the state. Major aquifers are located in the following formations: Ogallala, Alluvium and Bol-som Deposits, Edwards-Trinity (Plateau), Edwards (Balcones Fault Zone—San Antonio Region), Edwards (Balcones Fault Zone—Austin Region), Trinity Group, Carrizo-Wilcox, and Gulf Coast.

(8) Natural barriers—The natural characteristics of a site or surface and subsurface composition that serves to impede the movement of radioactive material. Natural barriers may include, for example, the location of a facility remote from an aquifer, or the sorptive capability of the soil surrounding a facility.

(9) Person affected—A person:

(A) who is a resident of a county, or a county adjacent to the county, in which radioactive materials subject to the Texas Radiation Control Act (Act) are/or will be located, including any

person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and

(B) who shall demonstrate that he has suffered or will suffer actual injury or economic damage.

(10) Processing—The storage, extraction of materials, transfer, volume reduction, compaction, incineration, solidification, or other separation and preparation of radioactive waste from other persons for reuse or disposal, including any treatment or activity that renders the waste less hazardous, safer for transport, or amenable to recovery, storage, or disposal.

(11) Radioactive waste - Any discarded or unwanted radioactive material unless exempted by agency section or any radioactive material that would require processing before it could be put to a beneficial reuse. The term does not include byproduct material as defined in §289.201(b) of this title, uranium ore, naturally occurring radioactive material (NORM) waste, or oil and gas NORM waste.]

(11) [(12)] Radioactive waste processing facility - A facility where radioactive waste received from other persons is processed and repackaged according to United States Department of Transportation (DOT) regulations.

(12) [(13)] Radioactive waste storage facility - A facility where radioactive waste received from other persons and packaged according to DOT regulations is stored while awaiting shipment to a licensed radioactive waste processing or disposal facility.

(13) [(14)] Reconnaissance level information - Any information or analysis that can be retrieved or generated without the performance of new comprehensive site-specific investigations. Reconnaissance level information includes, but is not limited to, relevant published scientific literature; drilling records required by state agencies, such as the Railroad Commission of Texas, the Texas Natural Resource Conservation Commission (**Commission**), and the Texas Natural Resources Information System; and reports of governmental agencies.

(14) [(15)] Site - The real property, including the buffer zone, on which a radioactive waste processing or storage facility may be located.

(15) [(16)] Site monitoring - The procedures for the monitoring of the site and environment to assess quality of site operations and performance and to detect and quantify levels and types of radioactivity and chemicals in the environment. It includes preoperational, operational, and license termination phases.

(16) [(17)] Site operations - The routine day-to-day activities carried out at the site for the receipt, processing, and storage of radioactive waste.

(17) [(18)] Site suitability - The capability of the various characteristics of a processing or storage facility or site to safely contain the radioactive waste expected to be present at the site.

(18) [(19)] Sole source aquifer - The aquifer which is the sole or principal source of drinking water for an area designated under the Safe Drinking Water Act of 1974, 42 United States Codes Annotated 300f, et seq.

(19) [(20)] **Waste processing and storage categories [Transport group] - Radionuclides classified as follows** [Transport group is defined as]:

(A) Any one of seven groups into which radionuclides in normal form are classified, according to their toxicity and their relative potential hazard in transport, **as specified in subsection (x) of this section** [§289.201(q)(1) of this title].

(B) Any radionuclide not specifically listed in one of the **categories** [groups] in **subsection (x) of this section** [§289.201(q)(1) this title] shall be assigned to one of the **categories** [groups] in accordance with **subsection (x)(2) of this section**. [the following table:]

[Figure 1: 25 TAC §289.254(b)(20)(B)]

(20) [(21)] Wetlands - Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that, under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas.

(c) Activities requiring license. Except for persons exempted by this section, no person shall receive, possess, and store or process radioactive waste from another person except as authorized in a specific license issued **in accordance with** [pursuant to] this section.

(d) Radioactive waste processing and storage facility classification.

(1) Classification of radioactive waste processing and storage facilities. Radioactive waste processing and storage facilities are classified according to the radionuclides, other than sealed sources, received, possessed, or processed in each of the **waste processing and storage categories** [transport groups], as defined in **subsection (b) of this section** [§289.201(b) of this title] with all applicable provisions, except that, for the purposes of this section which apply to processing and storage of radioactive waste, **Category** [Group] IV shall include **waste processing and storage categories IV-VII**. The total possession limit of each **category** [group] of unsealed (dispersible) radionuclides for each **class** [category] of facility is as follows:[.]

Figure 1: 25 TAC § 289.254(d)(1)

[Figure 2: 25 TAC §289.254(d)(1)]

(2) [(A)] Class **III** [C] storage facilities are those in which the applicable possession limit of radioactive waste exceeds any limit of class **II** [B] storage facilities.

(3) [(B)] Class **III** [C] processing facilities are those in which the applicable possession limit of radioactive waste exceeds any limit of class **II** [B] processing facilities.

[(2) For mixtures of radionuclides, the following shall apply.]

[(A) If the identity and respective activity of each radionuclide are known, the permissible activity of each radionuclide shall be such that the sum, for all groups present, of the ratio between the total activity for each group to the permissible activity for each group will not be greater than unity.]

[(B) If the groups of the radionuclides are known but the amount in each group cannot be reasonably determined, the mixture shall be assigned to the most restrictive group present.

[(C) If the identity of all or some of the radionuclides cannot be reasonably determined, each of those unidentified radionuclides shall be considered as belonging to the most restrictive group which cannot be positively excluded.]

[(D) Mixtures consisting of a single radioactive decay chain where the radionuclides are in the naturally occurring proportions shall be considered as consisting of a single radionuclide. The group and activity shall be that of the first member present in the chain, except that if a radionuclide "X" has a half-life longer than that of that first member and an activity greater than that of any other member, including the first, at any time during processing, the transport group shall be that of the nuclide "X" and the activity of the mixture shall be the maximum activity of that nuclide "X" during processing.]

(e) Exemptions.

(1) (No change.)

(2) Unsealed sources.

(A) Persons who receive, possess, or process sources of radioactive material in unsealed form as radioactive waste from other persons are exempt from this section, provided that:

(i) the total radioactivity of all radioactive waste possessed at any one time does not exceed the applicable limits for class I [A] processing or storage facilities as described in subsection (d) of this section; and

(ii) (No change.)

(B) (No change.)

(3) (No change.)

(f) Filing application for specific license.

(1)-(6) (No change.)

(7) Applications or documents submitted to the agency in connection with licensing actions shall be made available for public inspection in accordance with provisions of the [Texas Open Records Act], Government Code, Chapter 552, Texas **Texas Public Information Act**. If the application contains information of the type described in the Texas **Public Information** [Open Records] Act which, the applicant wishes withheld from public disclosure, such information shall be submitted with the application under separate cover, along with a justification for withholding the information.

(8)-(10) (No change.)

(11) Notwithstanding the provisions of **§289.204(e)(1)** [12.11(a) of TRCR Part 12 as adopted by reference in §289.126] of this title, reimbursement of application fees may be granted in the following manner.

(A)-(B) (No change.)

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the **Formal Hearing Procedures** [formal hearing procedures of the Texas Department of Health], §1.21-1.34 of this title (relating to **the Texas Board of Health**) [Formal Hearing Procedures]).

(g) Application requirements. An applicant for a license under this section shall include the following information in the application to the agency:

(1)-(14) (No change.)

(15) for radioactive waste processing facilities, a description of the equipment to be installed to maintain control over maximum concentrations of radioactive materials in gaseous and liquid effluents produced during normal operations and the means to be employed for keeping levels of radioactive material in effluents to unrestricted areas as low as reasonably achievable and within the limits listed in **§289.202** [§289.113] of this title; and

(16) (No change.)

(h) Financial assurance and record keeping for decommissioning.

(1)-(5) (No change.)

(6) Financial assurance for decommissioning must be provided by one or more of the following methods.

(A) (No change.)

(B) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid [should the licensee default]. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in **§289.252(w)(3) of this title** [subsection (w)(3) of this section]. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. **A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in §289.252(w)(3) of this title. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company.** Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions.

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as **5** [five] years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the agency, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the agency within 30 days after receipt of notification of cancellation.

(ii)-(iii) (No change.)

(C)-(D) (No change.)

(7) Each person licensed under this **section** [part] shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the agency. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the agency considers important to decommissioning consists of **the following**: [.]

(A) **records** [Records] of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas, as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations; [.]

(B) **as-built** [As-built] drawings and modifications of structures and equipment in restricted areas where radioactive waste is processed and/or stored, and of locations of possible inaccessible contamination such as buried pipes that may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;[.]

(C) **except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or byproduct materials having only half-lives of less than 65 days, a list contained in a single document and updated every 2 years, of the following:**

(i) **all areas outside of restricted areas that require documentation under subparagraph (A) of this paragraph; and**

(ii) **all areas outside of restricted areas where current and previous wastes have been buried as documented under §289.202(tt) of this title; and**

(D) [(C)] Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(i) Emergency plan for responding to a release.

(1) **A new or renewal** [an] application for each specific license authorizing the receipt, possession, transport, storage, and processing of radioactive waste from other persons in excess of the quantities in §289.252(w)(4) of this title must contain either:

(A)-(B) (No change.)

(2) One or more of the following factors may be used to support an evaluation submitted **in accordance with** [pursuant to] paragraph (1)(A) of this subsection:

(A)-(G) (No change.)

(3) An emergency plan for responding to a release of radioactive waste submitted **in accordance with** [pursuant to] paragraph (1)(B) of this subsection must include the following information:

(A)-(M) (No change.)

(4) (No change.)

(j) Additional environmental requirements for class **III** [C] facilities. An application for a license for a class **III** [C] processing or storage facility shall include environmental information which may be based on reconnaissance level information when appropriate and addresses the following:

(1)-(5) (No change.)

(k)-(m) (No change.)

(n) Specific terms and conditions to license.

(1) Each license issued **in accordance with** [pursuant to] this section shall be subject to all the provisions of the Act, now or hereafter in effect, and to all rules, regulations, and orders of the agency.

(2) No license issued or granted under this section and no right to possess or utilize radioactive material granted by any license issued **in accordance with** [pursuant to] this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the agency shall, after securing full information, find that the transfer is in accordance with the provisions of the Act, and shall give its consent in writing.

(3) Each person licensed by the agency **in accordance with** [pursuant to] this section shall confine his use and possession of the material licensed to the locations and purposes authorized in the license.

(4)-(6) (No change.)

(o)-(s) (No change.)

(t) Site suitability criteria. The following requirements specify the characteristics which a new site must have to be acceptable for licensure.

(1) (No change.)

(2) No new site shall be located in a 100-year floodplain, as designated by the TNRCC, or a wetland.

(3) (No change.)

(u) Minimum criteria for facility design and operation.

(1) (No change.)

(2) The design and operation of the radioactive waste processing or storage facility shall be such that:

(A) (No change.)

(B) radiation levels, concentrations, and potential exposures off-site due to airborne releases during operations are within the limits established in **§289.202** [§289.113] of this title and are maintained as low as reasonably achievable.

(3)-(4) (No change.)

(5) The location and construction of any new radioactive waste processing facility shall have a buffer zone adequate to permit emergency measures to be implemented following accidents and to address airborne plume dispersals and, as a minimum, shall be such that:

(A) the active components of a class **II** [B] facility are located at least 30 meters from the nearest residence as of the date of the license application; and

(B) the active components of a class **III** [C] facility are located at least 30 meters from the nearest property not owned or occupied by the licensee.

(v) Waste processing and packaging requirements. All processed radioactive waste offered for transport or disposal must meet:

(1) all applicable transportation requirements of the agency, the **United States Nuclear Regulatory Commission**, and of the DOT; and

(2) (No change.)

(w) Environmental assessment. A written analysis of the impact on the human environment will be prepared or secured by the agency for any license for a class **III [C]** processing or storage facility and shall be available to the public for written comment at least 30 days prior to the beginning of a hearing, if any, on the issuance or renewal of the license.

(x) **Waste processing and storage categories of radionuclides.**

(1) **The following table contains waste processing and storage categories of radionuclides.**

Figure 2: 25 TAC §289.254(x)(1)

(2) **Any radionuclide not specifically listed in paragraph (1) of this section shall be assigned to one of the categories in accordance with the following table.**

Figure 3: 25 TAC §289.254(x)(2)

(3) **For mixtures of radionuclides, the following shall apply:**

(A) **If the identity and respective activity of each radionuclide are known, the permissible activity of each radionuclide shall be such that the sum, for all categories present, of the ratio between the total activity for each category to the permissible activity for each category will not be greater than unity.**

(B) **If the categories of the radionuclides are known but the amount in each category cannot be reasonably determined, the mixture shall be assigned to the most restrictive category present.**

(C) **If the identity of all or some of the radionuclides cannot be reasonably determined, each of those unidentified radionuclides shall be considered as belonging to the most restrictive category which cannot be positively excluded.**

(D) **Mixtures consisting of a single radioactive decay chain where the radionuclides are in the naturally occurring proportions shall be considered as consisting of a single radionuclide. The category and activity shall be that of the first member present in the chain, except that if radionuclide "X" has a half-life longer than that of that first member and an activity greater than that of any other member, including the first, at any time during processing, the waste processing and storage category shall be that of nuclide "X" and the activity of the mixture shall be the maximum activity of nuclide "X" during processing.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712717

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 458-7236

25 TAC §289.257

The Texas Department of Health (department) proposes new §289.257, concerning the packaging and transportation of radioactive material, including radioactive waste. Specifically, the section defines terms that are used in the packaging and interstate transport of radioactive material and establishes minimum requirements for packaging and transport of radioactive material, related records, special modes of transportation, and the use of a uniform waste manifest. These requirements are similar to the packaging and transportation requirements of the United States Department of Transportation and are items of compatibility with the United States Nuclear Regulatory Commission. As an agreement state, Texas must adopt the items of compatibility. For shipments of radioactive waste, the section establishes requirements for emergency plans, quality control plans, inspections of low-level radioactive waste shipments, and fees for shipments of low-level radioactive waste. These requirements are specified in Health and Safety Code, Chapters 401 and 402. The fee of \$10 per cubic foot of shipped radioactive waste is to be assessed on shipments to a Texas low-level radioactive waste disposal facility and is therefore contingent upon the licensure, construction, and operation of a Texas low-level radioactive waste disposal facility.

Mrs. Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for local government as a result of enforcing or administering the section as proposed. Collection of the required fee is contingent upon the licensure, construction, and operation of a Texas low-level radioactive waste disposal facility and at this time, the facility is in the licensure process.

Mrs. McBurney also has determined that for each year of the first five years the proposed section will be in effect, the public benefit anticipated as a result of enforcing the section will be protection of the public and the environment from unnecessary exposure to radiation by ensuring safe transport of radioactive materials through requirements for appropriate packaging, modes of transport, and recordkeeping. Since the requirements are compatible with current federal packaging and transportation requirements and radioactive waste shipment fees are contingent upon licensure, construction, and operation of the Texas low-level radioactive waste disposal facility, there will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be presented to Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, Telephone (512) 834-6688. Public comments will be accepted for 30 days following publication of this proposal in the *Texas Register*. In addition, a public hearing will be held at 1:30 p.m.,

Monday, October 13, 1997, in Conference Room N218, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

The new section is proposed under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §2.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

The new section affects Health and Safety Code, Chapter 401.

§289.257. Packaging and Transportation of Radioactive Material.

(a) Purpose.

(1) This section establishes requirements for packaging, preparation for shipment, and transportation of radioactive material including radioactive waste.

(2) The packaging and transport of radioactive material are also subject to the requirements of §289.112 of this title (relating to Hearing and Enforcement Procedures), §289.114 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.201 of this title (relating to General Provisions), §289.202 of this title (relating to Standards for Protection Against Radiation), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgements), §289.252 of this title (relating to Licensing of Radioactive Material), and §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities) and to the regulations of other agencies (e.g., the United States Department of Transportation (DOT) and the United States Postal Service) having jurisdiction over means of transport. The requirements of this section are in addition to, and not in substitution for, other requirements.

(b) Scope.

(1) The requirements in this section apply to any licensee authorized by a specific or general license issued by the agency to receive, possess, use, or transfer radioactive material, if the licensee delivers that material to a carrier for transport, transports the material outside the site of usage as specified in the agency license, or transports that material on public highways. No provision of this section authorizes possession of radioactive material.

(2) Exemptions from the requirements for a license in subsection (c) of this section are specified in subsection (f) of this section. The general license in subsection (g) of this section requires that a United States Nuclear Regulatory Commission (NRC) certificate of compliance or other package approval be issued for the package to be used under the general license. The transport of radioactive material or delivery of radioactive material to a carrier for transport is subject to the operating controls and procedural requirements of subsections (h)-(m) of this section and to the general provisions of subsections (a)-(e) of this section, including DOT regulations referenced in subsection (e) of this section.

(c) Requirement for license. Except as authorized in a general or specific license issued by the agency, or as exempted in this section, no licensee may transport radioactive material or deliver radioactive material to a carrier for transport.

(d) Definitions. The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise. To ensure compatibility with international transportation standards, all limits in this section are given in terms of dual units: The International System of Units (SI) followed or preceded by United States (U.S.) standard or customary units. The U.S. customary units are not exact equivalents, but are rounded to a convenient value, providing a functionally equivalent unit. For the purpose of this section, SI units shall be used.

(1) A_1 - The maximum activity of special form radioactive material permitted in a Type A package.

(2) A_2 - The maximum activity of radioactive material, other than special form, low specific activity (LSA) and surface contaminated object (SCO) material, permitted in a Type A package. These values are either listed in subsection (s)(2) of this section, or may be derived in accordance with the procedure prescribed in subsection (s)(1) of this section.

(3) Authority - The Texas Low-Level Radioactive Waste Disposal Authority (TLLRWDA).

(4) Carrier - A person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(5) Certificate holder - A person who has been issued a certificate of compliance or other package approval by the agency.

(6) Chelating agent - Amine polycarboxylic acids (e.g., EDTA, DTPA), hydroxy-carboxylic acids, and polycarboxylic acids (e.g., citric acid, carboic acid, and glucinic acid).

(7) Chemical description - A description of the principal chemical characteristics of a low-level radioactive waste (LLRW).

(8) Consignee - The designated receiver of the shipment of low-level radioactive waste.

(9) Containment system - The assembly of components of the packaging intended to retain the radioactive material during transport.

(10) Conveyance - For transport on:

(A) public highway or rail by transport vehicle or large freight container;

(B) water by vessel, or any hold, compartment, or defined deck area of a vessel including any transport vehicle on board the vessel; and

(C) aircraft.

(11) Decontamination facility - A facility operating under a NRC, agreement state, or agency license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse, or other waste management objectives, and, for purposes of this section, is not considered to be a consignee for LLRW shipments.

(12) Disposal container - A transport container principally used to confine LLRW during disposal operations at a land disposal facility (also see definition for high integrity container). Note that for some shipments, the disposal container may be the transport package.

(13) Environmental Protection Agency (EPA) identification number - The number received by a transporter following appli-

cation to the administrator of EPA as required by 40 Code of Federal Regulations (CFR) Part 263.

(14) Exclusive use - The sole use by a single consignor of a conveyance for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor must issue specific instructions, in writing, for maintenance of exclusive use shipment controls, and include them with the shipping paper information provided to the carrier by the consignor.

(15) Fissile material - Plutonium-238, plutonium-239, plutonium-241, uranium-233, uranium-235, or any combination of these radionuclides. Unirradiated natural uranium and depleted uranium, and natural uranium or depleted uranium that has been irradiated in thermal reactors only are not include in this definition. Agency jurisdiction extends only to "special nuclear material in quantities not sufficient to form a critical mass" as defined in §289.201(b) of this title.

(16) Generator - A licensee operating under a NRC, agreement state, or agency license who:

(A) is a waste generator as defined in this section; or

(B) is the licensee to whom waste can be attributed within the context of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (e.g., waste generated as a result of decontamination or recycle activities).

(17) High integrity container (HIC) - A container commonly designed to meet the structural stability requirements of 10 CFR 61.56, and to meet DOT requirements for a Type A package.

(18) Low-level radioactive waste (LLRW) - Waste containing radioactive material that:

(A) is acceptable for disposal in a LLRW disposal facility;

(B) is subject to the disposal criteria and concentration limits established by the agency or the commission;

(C) is discarded or unwanted and is not exempt by agency rule adopted under Section 401.106; and

(D) does not include:

(i) irradiated reactor fuel, high level radioactive waste, or spent nuclear fuel as defined by 10 CFR Part 61;

(ii) the tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes; or

(iii) NORM waste or oil and gas NORM waste.

(19) Low specific activity (LSA) material - Radioactive material with limited specific activity that satisfies the following descriptions and limits. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material must be in one of the following three groups:

(A) LSA-I.

(i) Ores containing only naturally occurring radionuclides (e.g., uranium, thorium) and uranium or thorium concentrates of such ores; or

(ii) Solid unirradiated natural uranium or depleted uranium or natural thorium or their solid or liquid compounds or mixtures; or

(iii) Radioactive material, other than fissile material, for which the A_2 value is unlimited; or

(iv) Mill tailings, contaminated earth, concrete, rubble, other bulk debris, and activated material in which the radioactive material is essentially uniformly distributed, and the average specific activity does not exceed $10^{-6} A_2$ per gram (A_2/g).

(B) LSA-II.

(i) Water with tritium concentration up to 0.8 terabecquerel per liter (TBq/l) (20.0 curies per liter (Ci/l)); or

(ii) Material in which the radioactive material is uniformly distributed throughout, and the average specific activity does not exceed $10^{-4} A_2/g$ for solids and gases, and $10^{-5} A_2/g$ for liquids.

(C) LSA-III. Solids (e.g., consolidated wastes, activated materials) in which:

(i) the radioactive material is essentially uniformly distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.); and

(ii) the radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for seven days, would not exceed $0.1 A_2$; and

(iii) the average specific activity of the solid does not exceed $2 \times 10^{-3} A_2/g$.

(20) Low toxicity alpha emitters - Natural uranium, depleted uranium, natural thorium; uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than ten days.

(21) Maximum normal operating pressure - The maximum gauge pressure that would develop in the containment system in a period of one year under the heat condition specified in 10 CFR 71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

(22) Natural thorium - Thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

(23) Normal form radioactive material - Radioactive material that has not been demonstrated to qualify as special form radioactive material.

(24) Package - The packaging together with its radioactive contents as presented for transport.

(A) Fissile material package - A fissile material packaging together with its fissile material contents.

(B) Type A package - A packaging that, together with its radioactive contents limited to A_1 or A_2 as appropriate, meets the requirements of 49 CFR 173.410 and 173.412 and is designed to retain the integrity of containment and shielding under normal conditions of transport as demonstrated by the tests set forth in 49 CFR 173.465 or 173.466, as appropriate.

(C) Type B package - A Type B packaging together with its radioactive contents. On approval by the NRC, a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kilopascals (kPa) (100 pounds per square inch (lb/in²)) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in 10 CFR 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, see DOT regulations in 49 CFR Part 173. A Type B package approved before September 6, 1983, was designated only as Type B.

(25) Packaging - The assembly of components necessary to ensure compliance with the packaging requirements of this section. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(26) Physical description - The items called for on TRC Form 541 to describe a LLRW.

(27) Residual waste - LLRW resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable.

(28) Shipper - The licensed entity (i.e., the waste generator, waste collector, or waste processor) who offers LLRW for transportation, typically consigning this type of waste to a licensed waste collector, waste processor, or land disposal facility operator.

(29) Shipping paper - TRC Form 540 and, if required, TRC Form 540A which includes the information required by DOT in 49 CFR Part 172.

(30) Site of usage - The licensee's facility, including all buildings and structures between which radioactive material is transported and all roadways that are not within the public domain on which radioactive material can be transported.

(31) Specific activity of a radionuclide - The radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(32) Surface contaminated object (SCO) - A solid object that is not itself classed as radioactive material, but which has radioactive material distributed on any of its surfaces. A SCO must be

in one of the following two groups with surface activity not exceeding the following limits:

(A) SCO-I: A solid object on which:

(i) the non-fixed contamination on the accessible surface averaged over 300 square centimeters (cm²) (or the area of the surface if less than 300 cm²) does not exceed 4 becquerels per square centimeter (Bq/cm²) (10^{-4} microcurie per square centimeter (μ Ci/cm²)) for beta and gamma and low toxicity alpha emitters, or 4×10^{-1} Bq/cm² (10^{-5} μ Ci/cm²) for all other alpha emitters;

(ii) the fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 4×10^{-4} Bq/cm² (1μ Ci/cm²) for beta and gamma and low toxicity alpha emitters, or 4×10^{-3} Bq/cm² ($10^{-1} \mu$ Ci/cm²) for all other alpha emitters; and

(iii) the non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 4×10^{-4} Bq/cm² (1μ Ci/cm²) for beta and gamma and low toxicity alpha emitters, or 4×10^{-3} Bq/cm² ($10^{-1} \mu$ Ci/cm²) for all other alpha emitters.

(B) SCO-II: A solid object on which the limits for SCO-I are exceeded and on which the following limits are not exceeded:

(i) the non-fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 400 Bq/cm² ($10^{-2} \mu$ Ci/cm²) for beta and gamma and low toxicity alpha emitters or 40 Bq/cm² ($10^{-3} \mu$ Ci/cm²) for all other alpha emitters;

(ii) the fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 8×10^{-5} Bq/cm² (20μ Ci/cm²) for beta and gamma and low toxicity alpha emitters, or 8×10^{-4} Bq/cm² (2μ Ci/cm²) for all other alpha emitters; and

(iii) the non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 8×10^{-5} Bq/cm² (20μ Ci/cm²) for beta and gamma and low toxicity alpha emitters, or 8×10^{-4} Bq/cm² (2μ Ci/cm²) for all other alpha emitters.

(33) TRC Forms 540, 540A, 541, 541A, 541B, 542, and 542A - Official agency forms referenced in subsection (s)(5) of this section. Licensees need not use originals of these forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information. Upon agreement between the shipper and consignee, TRC Forms 541 (and 541A and 541B) and TRC Forms 542 (and 542A) may be completed, transmitted, and stored in electronic media. The electronic media must have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

(34) Uniform Low-Level Radioactive Waste Manifest or uniform manifest - The combination of TRC Forms 540, 541, and, if necessary, 542, and their respective continuation sheets as needed, or equivalent.

(35) Uranium - Natural, depleted, enriched:

(A) Natural uranium - Uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711

weight percent uranium-235, and the remainder by weight essentially uranium-238).

(B) Depleted uranium - Uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(C) Enriched uranium - Uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

(36) Waste collector - An entity, operating under a NRC, agreement state, or agency license, whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

(37) Waste description - The physical, chemical and radiological description of a LLRW as called for on TRC Form 541.

(38) Waste generator - An entity, operating under a NRC, agreement state, or agency license, who:

(A) possesses any material or component that contains radioactivity or is radioactively contaminated for which the licensee foresees no further use; and

(B) transfers this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal. A licensee performing processing or decontamination services may be a waste generator if the transfer of LLRW from its facility is defined as residual waste.

(39) Waste processor - An entity, operating under a NRC or agreement state license, whose principal purpose is to process, repack, or otherwise treat LLRW or waste generated by others prior to eventual transfer of waste to a licensed LLRW land disposal facility.

(40) Waste type - A waste within a disposal container having a unique physical description (i.e., a specific waste descriptor code or description; or a waste sorbed on or solidified in a specifically defined media).

(e) Transportation of radioactive material.

(1) Each licensee who transports radioactive material outside the site of usage as specified in the agency license, transports on public highways, or delivers radioactive material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in 49 CFR Parts 170-189 appropriate to the mode of transport. The licensee shall comply with the following, particularly noting DOT regulations as applicable in the following areas:

(A) Packaging - 49 CFR Part 173: Subparts A, B, and I.

(B) Marking and labeling - 49 CFR Part 172: Subpart D, §§172.407 - 172.407, §§172.436 - 172.440, and Subpart E.

(C) Placarding - 49 CFR Part 172: Subpart F, especially §§172.500 - 172.519, §172.556, and Appendices B and C.

(D) Accident reporting - 49 CFR Part 171: §171.15 and §171.16.

(E) Shipping papers and emergency information - 49 CFR Part 172: Subparts C and G.

(F) Hazardous material employee training - 49 CFR Part 172: Subpart H.

(G) Hazardous material shipper/carrier registration - 49 CFR Part 107: Subpart G.

(2) If DOT regulations are not applicable to a shipment of radioactive material, the licensee shall conform to DOT standards and requirements specified in paragraph (1) of this subsection to the same extent as if the shipment or transportation were subject to DOT regulations. A request for modification, waiver, or exemption from those requirements must be filed and approved by the agency. Any notification referred to in those requirements, must be submitted to the agency.

(f) Exemption for low-level radioactive materials.

(1) A licensee is exempt from all requirements of this section with respect to shipment or carriage of a package containing radioactive material having a specific activity not greater than 70 becquerels per gram (Bq/g) (0.002 microcuries per gram (μ Ci/g)).

(2) A licensee is exempt from all requirements of this section, other than subsections (e) and (i) of this section, with respect to shipment or carriage of the following packages, provided the packages contain no fissile material, or the fissile material exemption standards of 10 CFR 71.53 are satisfied:

(A) a package containing no more than a Type A quantity of radioactive material;

(B) a package in which the only radioactive material is LSA material or SCO, provided the external radiation level at 3 m from the unshielded material or objects does not exceed 10 millisieverts per hour (mSv/hr) (1 rem per hour (rem/hr)); or

(3) A licensee is exempt from all requirements of this section, other than subsections (e) and (i) of this section, with respect to shipment or carriage of LSA material in group LSA-I, or SCOs in group SCO-I.

(4) Common and contract carriers, freight forwarders, and warehousemen, who are subject to the rules and regulations of the DOT or the United States Postal Service (39 CFR Parts 14 and 15), are exempt from these regulations to the extent that they transport or store sources of radiation in the regular course of their carriage for another or storage incident thereto. Private carriers who are subject to the rules and regulations of the DOT are exempted from these regulations to the extent that they transport sources of radiation. Common, contract, and private carriers who are not subject to the rules and regulations of the DOT or the United States Postal Service are subject to applicable sections of these regulations.

(g) General license.

(1) NRC-approved package.

(A) A general license is hereby issued to any licensee of the agency to transport, or to deliver to a carrier for transport, radioactive material in a package for which a license, certificate of compliance, or other approval has been issued by the NRC.

(B) This general license applies only to a licensee who has a quality assurance program approved by the NRC as satisfying the provisions of 10 CFR 71.

(C) This general license applies only to a licensee who meets the following requirements:

(i) has a copy of the specific license, certificate of compliance, or other approval by the NRC of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken before shipment; and

(ii) complies with the terms and conditions of the specific license, certificate, or other approval by the NRC, as applicable, and the applicable requirements of 10 CFR 71;

(2) Previously approved package.

(A) A Type B package previously approved by the NRC, but not designated as B(U) or B(M) in the identification number of the NRC certificate of compliance, may be used under the general license of subsection (a) of this section with the following additional conditions:

(i) fabrication of the packaging was satisfactorily completed before August 31, 1986, as demonstrated by application of its model number in accordance with NRC regulations at 10 CFR 71.85(c);

(ii) a package used for a shipment to a location outside the United States is subject to multilateral approval, as defined in DOT regulations at 49 CFR 173.403; and

(iii) a serial number that uniquely identifies each packaging which conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each packaging.

(B) A Type B(U) package, a Type B(M) package, a LSA material package or a fissile material package, previously approved by the NRC but without the designation "-85" in the identification number of the NRC certificate of compliance, may be used under the general license of subsection (a) of this section with the following additional conditions:

(i) fabrication of the package is satisfactorily completed by April 1, 1996, as demonstrated by application of its model number in accordance with NRC regulations at 10 CFR 71.85(c);

(ii) a package used for a shipment to a location outside the United States is subject to multilateral approval except approved under special arrangement in accordance with DOT regulations at 49 CFR 173.403; and

(iii) a serial number which uniquely identifies each packaging which conforms to the approved design is assigned to and legibly and durably marked on the outside of each packaging.

(3) DOT specification container.

(A) A general license is issued to any licensee to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material or for a Type B quantity of radioactive material as specified in 49 CFR Parts 173 and 178.

(B) This general license applies only to a licensee who:

(i) has a copy of the specification;

(ii) complies with the terms and conditions of the specification and the applicable requirements of this section; and

(iii) has a quality assurance program required by 10 CFR 71.105.

(C) The general license in subparagraph (A) of this paragraph is subject to the limitation that the specification container may not be used for a shipment to a location outside the United States except by multilateral approval as defined in 49 CFR 173.403.

(4) Use of foreign approved package.

(A) A general license is issued to any licensee to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate which has been revalidated by the DOT as meeting the applicable requirements of 49 CFR 171.12.

(B) This general license applies only to international shipments.

(C) This general license applies only to a licensee who:

(i) has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;

(ii) complies with the terms and conditions of the certificate and revalidation, and with the applicable requirements of this section; and

(iii) the licensee has a quality assurance program approved by the NRC.

(h) Routine determinations. Before each shipment of radioactive material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this section and of the license. The licensee shall determine that:

(1) the package is proper for the contents to be shipped;

(2) the package is in unimpaired physical condition except for superficial defects such as marks or dents;

(3) each closure device of the packaging, including any required gasket, is properly installed, secured, and free of defects;

(4) any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

(5) any pressure relief device is operable and set in accordance with written procedures;

(6) the package has been loaded and closed in accordance with written procedures;

(7) any structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable for that purpose, unless it satisfies the design requirements of 10 CFR 71.45;

(8) the level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable (ALARA), and within the limits specified in DOT regulations in 49 CFR 173.443;

(9) external radiation levels around the package and around the vehicle, if applicable, will not exceed the following limits at any time during transportation:

(A) Except as provided in subparagraph (B) of this paragraph, each package of radioactive materials offered for transportation must be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level does not exceed 2 mSv/hr (200 mrem/hr) at any point on the external surface of the package, and the transport index does not exceed 10.

(B) A package that exceeds the radiation level limits specified in subparagraph (A) of this paragraph must be transported by exclusive use shipment only, and the radiation levels for such shipment must not exceed the following during transportation:

(i) 2 mSv/hr (200 mrem/hr) on the accessible external surface of the package, unless the following conditions are met, in which case the limit is 10 mSv/hr (1000 mrem/hr):

(I) the shipment is made in a closed transport vehicle;

(II) the package is secured within the vehicle so that its position remains fixed during transportation; and

(III) there are no loading or unloading operations between the beginning and end of the transportation;

(ii) 2 mSv/hr (200 mrem/hr) at any point on the outer surface of the vehicle, including the top and underside of the vehicle; or in the case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load or enclosure, if used, and on the lower external surface of the vehicle; and

(iii) 0.1 mSv/hr (10 mrem/hr) at any point 2 meters (m) (6.6 feet (ft)) from the outer lateral surfaces of the vehicle (excluding the top and underside of the vehicle); or in the case of a flat-bed style vehicle, at any point 2 m (6.6 ft) from the vertical planes projected by the outer edges of the vehicle (excluding the top and underside of the vehicle); and

(iv) 0.02 mSv/hr (2 mrem/hr) in any normally occupied space, except that this provision does not apply to private carriers, if exposed personnel under their control wear radiation dosimetry devices in conformance with §289.202(q) of this title;

(10) a package must be designed, constructed, and prepared for transport so that in still air at 38 degrees Celsius (100 degrees Fahrenheit) and in the shade, no accessible surface of a package would have a temperature exceeding 50 degrees Celsius (122 degrees Fahrenheit) in a nonexclusive use shipment, or 85 degrees Celsius (185 degrees Fahrenheit) in an exclusive use shipment. Accessible package surface temperatures shall not exceed these limits at any time during transportation; and

(11) a package must not incorporate a feature intended to allow continuous venting during transport.

(i) Air transport of plutonium.

(1) Notwithstanding the provisions of any general licenses and notwithstanding any exemptions stated directly in this section or included indirectly by citation of 49 CFR Chapter 1, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

(A) the plutonium is contained in a medical device designed for individual human application; or

(B) the plutonium is contained in a material in which the specific activity is not greater than 0.002 μ Ci/g (70 Bq/g) of material and in which the radioactivity is essentially uniformly distributed; or

(C) the plutonium is shipped in a single package containing no more than an A_2 quantity of plutonium in any isotope or form, and is shipped in accordance with subsection (e) of this section; or

(D) the plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the NRC.

(2) Nothing in paragraph (1) of this subsection is to be interpreted as removing or diminishing the requirements of 10 CFR 73.24.

(3) For a shipment of plutonium by air which is subject to paragraph (1) of this subsection, the licensee shall, through special arrangement with the carrier, require compliance with 49 CFR 175.704, DOT regulations applicable to the air transport of plutonium.

(j) Opening instructions. Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with §289.202(ee)(5) of this title.

(k) Records. Each licensee shall maintain, for a period of three years after shipment, a record of each shipment of radioactive material showing the following where applicable:

(1) identification of the packaging by model number and serial number;

(2) verification that there are no significant defects in the packaging, as shipped;

(3) type and quantity of radioactive material in each package, and the total quantity of each shipment;

(4) date of the shipment;

(5) for fissile packages and for Type B packages, any special controls exercised;

(6) name and address of the transferee;

(7) address to which the shipment was made; and

(8) surveys performed to determine compliance with subsection (h)(8) and (9) of this section.

(l) Reports. The shipper shall immediately report by telephone, telegram, mailgram, or facsimile, all radioactive waste transportation accidents to the agency and the local emergency planning committees in the county where the radioactive waste accident occurs. All other accidents involving radioactive material shall be reported in accordance with §289.202(xx) and (yy) of this title.

(m) Advance notification of transport of certain radioactive waste.

(1) As specified in paragraphs (2)-(4) of this subsection, each licensee shall provide advance notification to the governor of a state, or the governor's designee, of the shipment of radioactive waste,

through, or across the boundary of the state, before the transport, or delivery to a carrier, for transport, of radioactive waste outside the confines of the licensee's facility or other place of use or storage.

(2) Advance notification is required under this section for shipment of radioactive waste meeting the following three conditions:

(A) the radioactive waste is required by this section to be in Type B packaging for transportation;

(B) the radioactive waste is being transported to or across a state boundary en route to a disposal facility or to a collection point for transport to a disposal facility; and

(C) the quantity of radioactive waste in a single package exceeds the least of the following:

(i) 3000 times the A_1 value of the radionuclides as specified in subsection (vv)(2) of this section for special form radioactive material;

(ii) 3000 times the A_2 value of the radionuclides as specified in subsection (vv)(2) of this section for normal form radioactive material; or

(iii) 1000 terabecquerels (TBq) (27,000 curies (Ci)).

(3) The following are procedures for submitting advance notification:

(A) The notification must be made in writing to the office of each appropriate governor or governor's designee and to the agency.

(B) A notification delivered by mail must be postmarked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

(C) A notification delivered by messenger must reach the office of the governor or of the governor's designee at least four days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

(i) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of radioactive waste was published in the Federal Register on June 30, 1995 (60 FR 34306).

(ii) The list will be published annually in the Federal Register on or about June 30 to reflect any changes in information.

(iii) A list of the names and mailing addresses of the governors' designees is available on request from the Director, Office of State Programs, United States Nuclear Regulatory Commission, Washington, DC 20555.

(D) The licensee shall retain a copy of the notification as a record for three years.

(4) Each advance notification of shipment of radioactive waste must contain the following information:

(A) the name, address, and telephone number of the shipper, carrier, and receiver of the radioactive waste shipment;

(B) a description of the radioactive waste contained in the shipment, as specified in the regulations of DOT in 49 CFR Part 172, §172.202 and §172.203(d);

(C) the point of origin of the shipment and the seven-day period during which departure of the shipment is estimated to occur;

(D) the seven-day period during which arrival of the shipment at state boundaries is estimated to occur;

(E) the destination of the shipment, and the seven-day period during which arrival of the shipment is estimated to occur; and

(F) a point of contact, with a telephone number, for current shipment information.

(5) A licensee who finds that schedule information previously furnished to a governor or governor's designee, in accordance with this section, will not be met, shall telephone a responsible individual in the office of the governor of the state or of the governor's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the date, time, and name of the individual contacted for three years.

(6) The following are procedures for a cancellation notice.

(A) Each licensee who cancels a radioactive waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each state or to the governor's designee previously notified, and to the agency.

(B) The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled. The licensee shall retain a copy of the notice as a record for three years.

(n) Emergency plan. Each shipper and transporter of radioactive waste shall adopt an emergency plan approved by the agency for responding to transportation accidents.

(o) Inspections. Each shipment of LLRW to a licensed land disposal facility in Texas shall be inspected by the agency prior to shipment. The waste shipper shall notify the agency no less than 72 hours prior to the scheduled shipment of the intent to transport waste to the licensed land disposal facility.

(p) Quality control program. Each shipper shall adopt a quality control program to include verification of the following to ensure that shipping containers are suitable for shipments to a licensed disposal facility:

- (1) identification of appropriate container(s);
- (2) container testing documentation is adequate;
- (3) appropriate container used;
- (4) container packaged appropriately;
- (5) container labeled appropriately;
- (6) manifest filled out appropriately; and
- (7) documentation maintained of each step.

(q) Transfer for disposal and manifests.

(1) The requirements of this section and subsection (s)(5) of this section are designed to:

(A) control transfers of LLRW by any waste generator, waste collector, or waste processor licensee, as defined in this section, who ships LLRW either directly, or indirectly through a

waste collector or waste processor, to a licensed LLRW land disposal facility, as defined in §289.201(b) of this title;

(B) establish a manifest tracking system; and

(C) supplement existing requirements concerning transfers and recordkeeping for those wastes.

(2) Beginning March 1, 1998, all affected licensees must use subsection (s)(5) of this section.

(3) Each shipment of LLRW intended for disposal at a licensed land disposal facility must be accompanied by a shipment manifest in accordance with subsection (s)(5)(A) of this section.

(4) Any licensee shipping LLRW intended for ultimate disposal at a licensed land disposal facility must document the information required on the uniform manifest and transfer this recorded manifest information to the intended consignee in accordance with subsection (s)(5) of this section.

(5) Each shipment manifest must include a certification by the waste generator as specified in subsection (s)(5)(J) of this section, as appropriate.

(6) Each person involved in the transfer for disposal and disposal of LLRW, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in subsection (s)(5)(K) of this section, as appropriate.

(7) Any licensee shipping LLRW to a licensed Texas LLRW disposal facility shall comply with the waste acceptance criteria in 31 TAC §§451.21-451.29.

(r) Fees.

(1) Each shipper shall be assessed a fee for shipments of LLRW originating in Texas or out-of-state being shipped to a licensed Texas LLRW disposal facility and these fees shall be:

(A) \$10 per cubic foot of shipped LLRW;

(B) collected by the Authority and deposited to the credit of the radiation and perpetual care fund; and

(C) used exclusively by the agency for emergency planning for and response to transportation accidents involving LLRW.

(2) Fee assessments under this section shall be suspended when the amount of fees collected reaches \$500,000, except that if the balance of fees collected is reduced to \$350,000 or less, the assessments shall be reinstituted to bring the balance of fees collected to \$500,000.

(3) Money expended from the radiation and perpetual care fund to respond to accidents involving LLRW must be reimbursed to the radiation and perpetual care fund by the responsible shipper or transporter according to rules adopted by the board.

(s) Appendices.

(1) Determination of A_1 and A_2 .

(A) Values of A_1 and A_2 for individual radionuclides, which are the bases for many activity limits elsewhere in these rules are given in paragraph (2) of this subsection. The curie (Ci) values specified are obtained by converting from the terabecquerel (TBq) figure. The curie values are expressed to three significant figures to

assure that the difference in the TBq and Ci quantities is one tenth of 1.0% or less. Where values of A_1 or A_2 are unlimited, it is for radiation control purposes only. For nuclear criticality safety, some materials are subject to controls placed on fissile material.

(B) For individual radionuclides whose identities are known, but which are not listed in paragraph (2) of this subsection, the determination of the values of A_1 and A_2 requires NRC approval, except that the values of A_1 and A_2 in paragraph (3) of this subsection may be used without obtaining NRC approval.

(C) In the calculations of A_1 and A_2 for a radionuclide not in paragraph (2) of this subsection, a single radioactive decay chain, in which radionuclides are present in their naturally occurring proportions, and in which no daughter nuclide has a half-life either longer than ten days, or longer than that of the parent nuclide, shall be considered as a single radionuclide, and the activity to be taken into account and the A_1 or A_2 value to be applied shall be those corresponding to the parent nuclide of that chain. In the case of radioactive decay chains in which any daughter nuclide has a half-life either longer than ten days, or greater than that of the parent nuclide, the parent and those daughter nuclides shall be considered as mixtures of different nuclides.

(D) For mixtures of radionuclides whose identities and respective activities are known, the following conditions apply.

(i) For special form radioactive material, the maximum quantity transported in a Type A package:

Figure 1: 25 TAC §289.257(s)(1)(D)(i)

(ii) For normal form radioactive material, the maximum quantity transported in a Type A package:

Figure 2: 25 TAC §289.257(s)(1)(D)(ii)

(iii) Alternatively, an A_1 value for mixtures of special form material may be determined as follows:

Figure 3: 25 TAC §289.257(s)(1)(D)(iii)

(iv) An A_2 value for mixtures of normal form material may be determined as follows:

Figure 4: 25 TAC §289.257(s)(1)(D)(iv)

(E) When the identity of each radionuclide is known, but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest A_1 or A_2 value, as appropriate, for the radionuclides in each group may be used in applying the formulas in subparagraph (D) of this paragraph. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A_1 or A_2 values for the alpha emitters and beta/gamma emitters.

(2) A_1 and A_2 values for radionuclides. The following table contains A_1 and A_2 values for radionuclides:

Figure 5: 25 TAC §289.257(s)(2)

(3) General values for A_1 and A_2 . The following table contains general values for A_1 and A_2 :

Figure 6: 25 TAC §289.257(s)(3)

(4) Activity-mass relationships for uranium. The following table contains activity-mass relationships for uranium:

Figure 7: 25 TAC §289.257(s)(4)

(5) Requirements for transfers of LLRW intended for disposal at licensed land disposal facilities and manifests.

(A) Manifest. A waste generator, collector, or processor who transports, or offers for transportation, LLRW intended for ultimate disposal at a licensed LLRW land disposal facility must prepare a manifest reflecting information requested on applicable TRC Forms 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)) and 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)) and, if necessary, on an applicable TRC Form 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and Regional Compact Tabulation)). TRC Forms 540 and 540A must be completed and must physically accompany the pertinent LLRW shipment. Upon agreement between shipper and consignee, TRC Forms 541, 541A and 541B, and 542 and 542A may be completed, transmitted, and stored in electronic media with the capability for producing legible, accurate, and complete records on the respective forms. Licensees are not required by the agency to comply with the manifesting requirements of this section when they ship:

(i) LLRW for processing and expect its return (i.e., for storage under their license) prior to disposal at a licensed land disposal facility;

(ii) LLRW that is being returned to the licensee who is the waste generator or generator, as defined in this section; or

(iii) radioactively contaminated material to a waste processor that becomes the processor's residual waste.

(B) Form instructions. For guidance in completing these forms, refer to the instructions that accompany the forms. Copies of manifests required by this subsection may be legible carbon copies, photocopies, or computer printouts that reproduce the data in the format of the uniform manifest.

(C) Forms. TRC Forms 540, 540A, 541, 541A, 541B, 542 and 542A, and the accompanying instructions, in hard copy, may be obtained from the agency.

(D) Information requirements of the DOT. This subsection includes information requirements of the DOT, as codified in 49 CFR Part 172. Information on hazardous, medical, or other waste, required to meet EPA regulations, as codified in 40 CFR Parts 259, 261 or elsewhere, is not addressed in this section, and must be provided on the required EPA forms. However, the required EPA forms must accompany the uniform manifest required by this section.

(E) General information. The shipper of the LLRW, shall provide the following information on the uniform manifest:

(i) the name, facility address, and telephone number of the licensee shipping the waste;

(ii) an explicit declaration indicating whether the shipper is acting as a waste generator, collector, processor, or a combination of these identifiers for purposes of the manifested shipment; and

(iii) the name, address, and telephone number, or the name and EPA identification number for the carrier transporting the waste.

(F) Shipment information. The shipper of the LLRW shall provide the following information regarding the waste shipment on the uniform manifest:

(i) the date of the waste shipment;

(ii) the total number of packages/disposal containers;

(iii) the total disposal volume and disposal weight in the shipment;

(iv) the total radionuclide activity in the shipment;

(v) the activity of each of the radionuclides hydrogen-3, carbon-14, technetium-99, iodine-129, chlorine-36, nickel-63, strontium-90, cesium-137, radium-226, and any other isotopes with a half-life greater than 35 years contained in the shipment; and

(vi) the total masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the total mass of uranium and thorium in source material.

(G) Disposal container and waste information. The shipper of the LLRW shall provide the following information on the uniform manifest regarding the waste and each disposal container of waste in the shipment:

(i) an alphabetic or numeric identification that uniquely identifies each disposal container in the shipment;

(ii) a physical description of the disposal container, including the manufacturer and model of any high integrity container;

(iii) the volume displaced by the disposal container;

(iv) the gross weight of the disposal container, including the waste;

(v) for waste consigned to a disposal facility, the maximum radiation level at the surface of each disposal container;

(vi) a physical and chemical description of the waste;

(vii) the total weight percentage of chelating agent for any waste containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

(viii) the approximate volume of waste within a container;

(ix) the sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name;

(x) the identities and activities of individual radionuclides contained in each container, the masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material. For discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides associated with or contained on these waste types within a disposal container shall be reported;

(xi) the total radioactivity within each container; and

(xii) for wastes consigned to a disposal facility, the classification of the waste in accordance with §289.202(ggg)(4)(A) of this title. Waste not meeting the structural stability requirements of §289.202(ggg)(4)(B)(ii) of this title must be identified.

(H) Uncontainerized waste information. The shipper of the LLRW shall provide the following information on the uniform

manifest regarding a waste shipment delivered without a disposal container:

(i) the approximate volume and weight of the waste;

(ii) a physical and chemical description of the waste;

(iii) the total weight percentage of chelating agent if the chelating agent exceeds 0.1% by weight, plus the identity of the principal chelating agent;

(iv) for waste consigned to a disposal facility, the classification of the waste in accordance with §289.202(ggg)(4)(A) of this title. Waste not meeting the structural stability requirements of §289.202(ggg)(4)(B)(ii) of this title must be identified;

(v) the identities and activities of individual radionuclides contained in the waste, the masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material; and

(vi) for wastes consigned to a disposal facility, the maximum radiation levels at the surface of the waste.

(I) Multi-generator disposal container information. This subparagraph applies to disposal containers enclosing mixtures of waste originating from different generators. (Note: The origin of the LLRW resulting from a processor's activities may be attributable to one or more generators (including waste generators) as defined in this section). It also applies to mixtures of wastes shipped in an uncontainerized form, for which portions of the mixture within the shipment originate from different generators.

(i) For homogeneous mixtures of waste, such as incinerator ash, provide the waste description applicable to the mixture and the volume of the waste attributed to each generator.

(ii) For heterogeneous mixtures of waste, such as the combined products from a large compactor, identify each generator contributing waste to the disposal container, and, for discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides contained on these waste types within the disposal container. For each generator, provide the following:

(I) the volume of waste within the disposal container;

(II) a physical and chemical description of the waste, including the solidification agent, if any;

(III) the total weight percentage of chelating agents for any disposal container containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

(IV) the sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name if the media is claimed to meet stability requirements in §289.202(ggg)(4)(B)(ii) of this title; and

(V) radionuclide identities and activities contained in the waste, the masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material if contained in the waste.

(J) Certification. An authorized representative of the waste generator, processor, or collector shall certify by signing and dating the shipment manifest that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the DOT and the agency. A collector in signing the certification is certifying that nothing has been done to the collected waste which would invalidate the waste generator's certification.

(K) Control and tracking.

(i) Any licensee who transfers LLRW to a land disposal facility or a licensed waste collector shall comply with the requirements in subclauses (I)-(IX) of this clause. Any licensee who transfers waste to a licensed waste processor for waste treatment or repackaging shall comply with the requirements of subclauses (IV)-(IX) of this clause. A licensee shall:

(I) prepare all wastes so that the waste is classified according to §289.202(ggg)(4)(A) of this title and meets the waste characteristic requirements in §289.202(ggg)(4)(B) of this title;

(II) label each disposal container (or transport package if potential radiation hazards preclude labeling of the individual disposal container) of waste to identify whether it is Class A waste, Class B waste, Class C waste, or greater than Class C waste, in accordance with §289.202(ggg)(4)(A) of this title;

(III) conduct a quality assurance program to assure compliance with §289.202(ggg)(4)(A) and (B) of this title;

(IV) prepare the uniform manifest as required by this subsection;

(V) forward a copy or electronically transfer the uniform manifest to the intended consignee so that either:

(-a-) receipt of the manifest precedes the LLRW shipment; or

(-b-) the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both items (-a-) and (-b-) of this subclause is also acceptable;

(VI) include the uniform manifest with the shipment regardless of the option chosen in subclause (V) of this clause;

(VII) receive acknowledgement of the receipt of the shipment in the form of a signed copy of the uniform manifest;

(VIII) retain a copy of or electronically store the uniform manifest and documentation of acknowledgement of receipt as the record of transfer of radioactive material as required by §289.251 of this title, §289.252 of this title, and §289.254 of this title; and

(IX) for any shipments or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this subsection, conduct an investigation in accordance with clause (v) of this subparagraph.

(ii) Any waste collector licensee who handles only prepackaged waste shall:

(I) acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of the uniform manifest;

(II) prepare a new uniform manifest to reflect consolidated shipments that meet the requirements of this subsection. The waste collector shall ensure that, for each container of waste in the shipment, the uniform manifest identifies the generator of that container of waste;

(III) forward a copy or electronically transfer the uniform manifest to the intended consignee so that either:

(-a-) receipt of the uniform manifest precedes the LLRW shipment; or

(-b-) the uniform manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both items (-a-) and (-b-) of this subclause is also acceptable;

(IV) include the uniform manifest with the shipment regardless of the option chosen in subclause (III) of this clause;

(V) receive acknowledgement of the receipt of the shipment in the form of a signed copy of the uniform manifest;

(VI) retain a copy of or electronically store the uniform manifest and documentation of acknowledgement of receipt as the record of transfer of radioactive material as required by §289.251 of this title, §289.252 of this title, and §289.254 of this title;

(VII) for any shipments or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this clause, conduct an investigation in accordance with clause (v) of this subparagraph; and

(VIII) notify the shipper and the agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance uniform manifest, unless notified by the shipper that the shipment has been cancelled.

(iii) Any licensed waste processor who treats or repackages waste shall:

(I) acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of the uniform manifest;

(II) prepare a new uniform manifest that meets the requirements of this subsection. Preparation of the new uniform manifest reflects that the processor is responsible for meeting these requirements. For each container of waste in the shipment, the manifest shall identify the waste generators, the preprocessed waste volume, and the other information as required in subparagraph (I) of this paragraph;

(III) prepare all wastes so that the waste is classified according to §289.202(ggg)(4)(A) of this title and meets the waste characteristics requirements in §289.202(ggg)(4)(B) of this title;

(IV) label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with §289.202(ggg)(4)(A) and (C) of this title;

(V) conduct a quality assurance program to assure compliance with §289.202(ggg)(4)(A) and (B) of this title;

(VI) forward a copy or electronically transfer the uniform manifest to the intended consignee so that either:

(-a-) receipt of the uniform manifest precedes the LLRW shipment; or

(-b-) the uniform manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both items (-a-) and (-b-) of this subclause is also acceptable;

(VII) include the uniform manifest with the shipment regardless of the option chosen in subclause (VI) of this clause;

(VIII) receive acknowledgement of the receipt of the shipment in the form of a signed copy of the uniform manifest;

(IX) retain a copy of or electronically store the uniform manifest and documentation of acknowledgement of receipt as the record of transfer of radioactive material as required by §289.251 of this title, §289.252 of this title, and §289.254 of this title;

(X) for any shipment or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this clause, conduct an investigation in accordance with clause (v) of this subparagraph; and

(XI) notify the shipper and the agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance uniform manifest, unless notified by the shipper that the shipment has been cancelled.

(iv) The land disposal facility operator shall perform the following:

(I) acknowledge receipt of the waste within one week of receipt by returning, as a minimum, a signed copy of the uniform manifest to the shipper. The shipper to be notified is the licensee who last possessed the waste and transferred the waste to the operator. If any discrepancy exists between materials listed on the uniform manifest and materials received, copies or electronic transfer of the affected forms must be returned indicating the discrepancy;

(II) maintain copies of all completed uniform manifests and electronically store the information required by §289.202(ggg)(4)(C)(iv)(II) of this title until the agency terminates the license; and

(III) notify the shipper and the agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance uniform manifest, unless notified by the shipper that the shipment has been cancelled.

(v) Any shipment or part of a shipment for which acknowledgement is not received within the times set forth in this section must undergo the following:

(I) be investigated by the shipper if the shipper has not received notification or receipt within 20 days after transfer; and

(II) be traced and reported. The investigation shall include tracing the shipment and filing a report with the agency. Each licensee who conducts a trace investigation shall file a written report with the agency within two weeks of completion of the investigation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712685

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 458-7236



TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 7. Memoranda of Understanding

30 TAC §7.105

The Texas Natural Resource Conservation Commission (commission) proposes new §7.105, concerning Memoranda of Understanding (MOU) between the commission and the Texas General Land Office (GLO).

EXPLANATION OF PROPOSED RULE

The MOU is proposed in response to House Bill 1, Article VI, Rider 11 from the 75th Legislature (1997). Texas Water Code, §5.104 requires the commission to adopt by rule any MOU between the commission and any other state agency.

The proposed MOU sets forth the coordination of program responsibility and procedural mechanisms relating to the rider which renewed the funding mechanism for the Galveston Bay Estuary Program (GBEP) by providing funds in the amount of \$750,000 per year for two years to be transferred from GLO to the commission and that supervision of the GBEP be through the commission. The proposed MOU also clarifies that the term "jointly administer" means the GLO and the commission, in consultation with the Galveston Bay Council, an advisory council, shall not agree to any program, policy or expenditure of resources without determining that the program, policy or expenditure is cost effective and an appropriate method for ensuring the restoration, maintenance or enhancement of the natural resources in and around Galveston Bay.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the section as proposed is in effect, there are no significant fiscal implications for state or local governments as a result of enforcement or administration of the section. Under the statutory authority for the memorandum of understanding, up to \$750,000 per year is provided to the commission for the joint administration of the GBEP. The adoption of the proposed section will have implications for the procedures under which funds for the program are managed, however, the section as proposed will have no direct effect on the costs of the commission, the GLO or units of local government.

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section will be more efficient coordination of activities by the commission and GLO related to administration of the GBEP and more cost-effective management of the funds appropriated from the Coastal Protection Account in the General Revenue Fund. There are no anticipated economic costs to persons, including any small business, required to comply with the section as proposed.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to adopt an MOU between the commission and GLO. This MOU will define the roles of both agencies and will provide for procedural mechanisms for jointly administering the GBEP. The MOU will not burden private real property as it does not propose any substantive regulations impacting private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and determined that it is not an action that may adversely affect a coastal natural resource area that is subject to the Coastal Management Program. The proposed rule does not govern any of the actions that must be subject to the goals and policies of the Program, pursuant to 31 TAC §505.11.

SUBMITTAL OF COMMENTS

Written comments on the proposal should reference Rule Log Number 97173-007-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640, fax (512) 239-5687. Written comments must be received by 5:00 p.m. 30 days from the date of publication of this proposal in the *Texas Register*. For further information concerning this proposal, please contact Marilyn Browning, Galveston Bay Estuary Program Manager, Water Quality Division, (281) 332-9937.

STATUTORY AUTHORITY

The new section is proposed under the Water Code, §5.103, which authorizes the commission to adopt rules as necessary for the performance of its functions, and Water Code, §5.104 which requires the commission to adopt by rule any MOU between the commission and any other state agency.

There are no other rules, codes, or statutes that will be affected by this proposal.

§7.105. Adoption of Memoranda of Understanding between the Texas General Land Office and the Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding (MOU) between the Texas General Land Office (GLO) and the Texas Natural Resource Conservation Commission (commission), which

sets forth the coordination of program responsibility and procedural mechanisms for the Galveston Bay Estuary Program (GBEP).

(1) Whereas, §5.104 of the Texas Water Code authorizes the commission to enter into a memorandum of understanding with any other state agency;

(2) Whereas, the 75th Legislature passed the Texas General Appropriations Act for 1998-99 and in Rider 11 directed an appropriation from the Coastal Protection Fund to implement the GBEP;

(3) Whereas, the commissioner of the GLO, pursuant to Texas Natural Resource Code, Chapter 40, is responsible for expenditures from the Coastal Protection Fund;

(4) Whereas, the Water Quality Act of 1987, §320, established the Galveston Bay National Estuary Program, now being implemented through the GBEP, a division of the commission;

(5) Whereas, the GBEP was established to develop a Comprehensive Conservation and Management Plan for Galveston Bay which is known as the Galveston Bay Plan;

(6) Whereas, the purposes of the Galveston Bay Plan are addressing threats to Galveston Bay arising from pollution, development, and overuse, and enhancing ecosystem-based management of Galveston Bay;

(7) Whereas, the Galveston Bay Plan's initiatives and implementation goals, and other Water Quality Act programs are generally within the existing jurisdiction of the commission, and the Texas Legislature has authorized the commission to broadly exercise its role in the management of aquatic and marine ecosystems, consistent with the comprehensive approach of the Galveston Bay Plan;

(8) Whereas, the 75th Legislature specifically directed that the GLO and the commission enter into a MOU to implement and to jointly administer the GBEP;

(9) Therefore, the GLO and the commission agree to the following provisions.

(b) Administration.

(1) The GLO and the commission, in consultation with the Galveston Bay Advisory Council, shall jointly administer the GBEP.

(2) For the purpose of this MOU "jointly administer" means that the GLO and the commission, in consultation with the Galveston Bay Council, an advisory council, shall not agree to any program, policy or expenditure of resources without determining that the program, policy or expenditure is cost effective and an appropriate method for ensuring the restoration, maintenance or enhancement of the natural resources in and around Galveston Bay.

(3) The GLO and the commission shall each designate one person to represent them for the purpose of interagency coordination and decision-making related to the GBEP.

(4) The GLO and the commission shall make good faith efforts to achieve consensus regarding the programs, policies and expenditures related to the implementation and administration of the GBEP.

(c) Dispute Resolution.

(1) The GLO and the commission shall submit to mediation or any other agreed form of alternative and appropriate dispute

resolution whenever they cannot agree on expenditures from appropriated funds.

(2) The GLO and the commission shall submit to mediation or any other agreed form of alternative and appropriate dispute resolution after the matter has been referred to senior policy personnel in each agency without reaching agreement.

(d) Term of Agreement.

(1) This MOU shall be effective on the date of the last person signing the MOU.

(2) The term of this MOU shall be from the effective date until termination.

(3) This MOU may be amended at any time by written concurrence of the signatories.

(4) This MOU may be terminated by either agency upon at least 30 days notice.

(5) Nothing in this MOU shall be construed to require either the GLO or the commission to perform any act in excess of its statutory authority.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 23, 1997.

TRD-9712632

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 239-4640



Chapter 70. Enforcement

Subchapter A. Enforcement Generally

30 TAC §70.4

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The commission proposes the repeal of §70.4, concerning Annual Enforcement Report. The purpose of the proposed action is to streamline agency processes for reporting on enforcement actions. This action is also part of the commission's implementation of House Bills 1133 and 1367, 75th Legislature, 1997.

EXPLANATION OF THE PROPOSED RULES. The proposed repeal would remove current §70.4, which requires the executive director to prepare an annual report of enforcement actions for the previous fiscal year. The section was created during the commission's initial consolidation of its procedural rules and was derived from previous §337.10. The commission adopted §337.10 under its broad rulemaking authority on May 24, 1995.

However, recent legislative action has created a specific statutory requirement for the compilation and reporting of information

on the commission's enforcement actions. House Bills 1133 and 1367, 75th Legislature, 1997, added a new §5.123 to the Texas Water Code, which requires the commission to prepare an electronic report on its enforcement actions. In accordance with statute, the commission will prepare an annual electronic report that will describe the enforcement actions for each type of regulatory program and include: the number of inspections; the number of notices of violations; the number of enforcement actions; the type of enforcement actions; the amount of penalties assessed, deferred, or collected; and any other information the commission determines is relevant. The report will be provided to the governor, lieutenant governor, and speaker of the house of representatives, and it will be made available to the general public via the commission's world wide web site. Therefore, because of the new statutory requirement, the separate requirements in current §70.4 are no longer necessary.

In addition, the repeal will streamline the development of the enforcement report and result in a report that is more accessible to the state's leadership and the general public. For example, §70.4 requires the executive director to list all inspections conducted by the commission. Since the agency conducts tens of thousands of inspections each year, the report is lengthy and resource intensive to develop. The new statute, however, requires the commission to only report numbers. Thus, the commission will be able to develop a simpler report that can be easily reproduced for the state's leadership and the public. As for the information that is required for reporting under the current §70.4, the commission will still be able to make it available on a case-by-case request, and the information could be more customized to an individual request.

FISCAL NOTE. Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the repeal is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the repeal.

PUBLIC BENEFIT. Mr. Minick also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the removal of an unnecessary regulation and the streamlining of commission processes. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a takings impact assessment for the rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to streamline agency operations with regard to the development of an annual enforcement report. The rule will substantially advance these specific purposes by repealing an unnecessary regulation. Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because it concerns commission procedural rules. The following exception to the application of Texas Government Code, Chapter 2007, apply to this rule: the action imposes no greater burden than is necessary to achieve the health and safety purpose.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The executive director has reviewed the proposed rule-making and found that it is neither identified in Coastal Co-

ordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

PUBLIC HEARING. A public hearing on this proposal will be held November 3, 1997, at 10:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS. Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97158-070-AD. Comments must be received by 5:00 p.m., November 3, 1997. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY. The repeal is proposed under Texas Water Code, §§5.103, 5.105, 5.123, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code, Health and Safety Code, and other laws of Texas and to establish and approve all general policy of the commission.

The proposed repeal implements Texas Water Code, §5.123.

§70.4. Annual Enforcement Report.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712642

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: January 7, 1998

For further information, please call: (512) 239-1966

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Chapter 305. Consolidated Permits

Subchapter N. Adoption of Memoranda of Understanding by Reference

30 TAC §305.521

The Texas Natural Resource Conservation Commission (commission) proposes the amendment of §305.521, relating to adoption of Memoranda of Understanding by Reference between the commission and the Texas General Land Office (GLO).

EXPLANATION OF PROPOSED RULE

Proposed amendments to §305.521(a)(4) is being done, in part, to relocate the MOU agreement between the commission and GLO to §7.105 in concurrent rulemaking. Chapter 7 of the commission rules is where all MOUs are to be eventually contained.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the section as proposed is in effect, there are no significant fiscal implications for state or local governments as a result of enforcement or administration of the section. Under the statutory authority for the memorandum of understanding, up to \$750,000 per year is provided to the commission for the joint administration of the GBEP. The adoption of the proposed section will have implications for the procedures under which funds for the program are managed, however, the section as proposed will have no direct effect on the costs of the commission, the GLO or units of local government.

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section will be more efficient coordination of activities by the commission and GLO related to administration of the GBEP and more cost effective management of the funds appropriated from the Coastal Protection Account in the General Revenue Fund. There are no anticipated economic costs to persons, including any small business, required to comply with the section as proposed.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to adopt an MOU between the commission and GLO. This MOU will define the roles of both agencies and will provide for procedural mechanisms for jointly administering the GBEP. The MOU will not burden private real property as it does not propose any substantive regulations impacting private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and determined that it is not an action that may adversely affect a coastal natural resource area that is subject to the Coastal Management Program. The proposed rule does not govern any of the actions that must be subject to the goals and policies of the Program, pursuant to 31 TAC §505.11.

SUBMITTAL OF COMMENTS

Written comments on the proposal should reference Rule Log Number 97173-007-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640, fax (512) 239-5687. Written comments must be received by 5:00 p.m. 30 days from the date of publication of this proposal in the *Texas Register*. For further information concerning this proposal, please contact Marilyn Browning, Galveston Bay Estuary Program Manager, Water Quality Division, (281) 332-9937.

STATUTORY AUTHORITY

The new section is proposed under the Water Code, §5.103, which authorizes the commission to adopt rules as necessary for the performance of its functions, and Water Code, §5.104 which requires the commission to adopt by rule any MOU between the commission and any other state agency.

There are no other rules, codes, or statutes that will be affected by this proposal.

§305.521. Adoption of Memoranda of Understanding by Reference.

The following memoranda of understanding between the commission and other state agencies, required to be adopted by rule as set forth in the Texas Water Code, §5.104, are adopted by reference. Copies of these documents are available upon request from the Texas Natural Resource Conservation Commission, Legal Division, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

(1) (No change.)

(2) the memorandum of understanding between the Texas Department of Health and the Texas Water Commission, which concerns the regulation and management of non-hazardous wastewater that contains radioactive constituents; **and**

(3) the memorandum of understanding (effective February, 1992) between the Texas Department of Transportation and the Texas Water Commission, which concerns primarily the assessment of water quality impacts resulting from certain transportation projects. [; and]

[(4) the memorandum of understanding (effective August 16, 1995) between the Texas General Land Office and the Texas Natural Resource Conservation Commission, which concerns the joint administration and implementation of the Galveston Bay Program.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 23, 1997.

TRD-9712631

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 239-4640



Chapter 330. Municipal Solid Waste

Subchapter Z. Waste Minimization and Recyclable Materials

30 TAC §330.1181, §330.1183

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §330.1181 and §330.1183, concerning used oil filters.

EXPLANATION OF PROPOSED RULES. The purpose of the proposed rulemaking is limited to amending §330.1181 and §330.1183(a) to establish an increase in the allowable used oil filter (UOF) storage quantity prior to transport. The commission proposes to amend the allowable storage quantity to make it possible for persons handling UOFs to accumulate larger quantities prior to transport without becoming a storage facility.

The existing regulations at §330.1183(a) state that: "any person storing more than three 55-gallon containers of used oil filters (UOFs), or the volumetric equivalent, must register with the Texas Natural Resource Conservation Commission (TNRCC) as a UOF storage facility" These proposed amendments would give greater flexibility by allowing persons handling UOFs, such as collection centers and generators, to store larger quantities on-site prior to transport. This would reduce transportation cost and thereby encourage greater participation in the recycling of UOFs in Texas.

Facilities that handle large quantities of UOFs would benefit from the proposed amendments because they would be able to store larger quantities on-site without registering as a storage facility and would require less transporter pickups. Some facilities may prefer to use a single container with a volume equivalent to the increased number of allowable 55-gallon containers. One single container holding an equivalent volume of UOFs could be more efficient and could also cut the cost of transportation. The proposed amendments would give greater flexibility in handling UOFs, and a facility would not be obligated to use a single container.

Small businesses, particularly those in rural areas, could benefit from the proposed amendments because transporters would not require as many trips to pickup stored filters. This should reduce transportation costs for small businesses.

The proposed amendment to §330.1181 would amend the definition of storage facility to increase the allowable storage quantity from three 55-gallon containers or the volumetric equivalent to six 55-gallon containers or the volumetric equivalent.

The proposed amendment to §330.1183(a) would amend requirements to allow a person to store up to six 55-gallon containers or the volumetric equivalent without having to register as a storage facility.

FISCAL NOTE. Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years these sections as proposed are in effect, there will be fiscal implications as a result of enforcement and administration of these sections. The fiscal implications of these rules will be to reduce UOF generator, collection center, and handler transportation costs by a variable amount.

PUBLIC BENEFIT. Mr. Minick also has determined that for the first five years these sections as proposed are in effect

the public benefit anticipated as a result of enforcement of and compliance with the sections will be more cost-effective regulation of used oil filter recycling. There are no anticipated increased costs to persons to comply with these sections as proposed.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to allow collection centers, generators, and other handlers to store a larger quantity of UOFs prior to transport without registration as a storage facility. The rules will substantially advance this specific purpose by increasing the allowable UOF storage quantity from three 55-gallon containers or the volumetric equivalent to six 55-gallon containers or the volumetric equivalent. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because the proposed changes allow increased UOF storage without registration as a storage facility, and they do not limit or restrict a person's rights in private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The executive director has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the Coastal Management Program.

SUBMITTAL OF COMMENTS. Written comments may be mailed to Bettie Bell, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-3223. All comments must be received within 30 days following the date of this publication and should reference Rule Log Number 97169-330-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Tooran Khosh at (512) 239-2580.

STATUTORY AUTHORITY. These amendments are proposed under Texas Health and Safety Code, Solid Waste Disposal Act, §§361.011, 361.024, and 361.432, which authorize the commission to regulate municipal solid waste and to adopt rules consistent with the general intent and purposes of the Act and require the commission to prohibit a used oil filter from being intentionally or knowingly placed in or accepted for disposal in a landfill permitted by the commission. These amendments are also proposed under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state.

These amendments implement Texas Health and safety Code Chapter 361.

§330.1181. Definitions.

The following words, terms, and abbreviations, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions pertinent to these and other sections are contained in §330.5 of this title (relating to Definitions).

Storage facility-A facility which is used to store more than **six** [three] 55-gallon drums **or containers**, or the volumetric equivalent, of used oil filters.

§ 330.1183. *Storage Facilities.*

(a) Any person storing more than **six** [three] 55-gallon containers of used oil filters (UOFs), or the volumetric equivalent, must register with the Texas Natural Resource Conservation Commission (TNRCC) as a UOF storage facility using the TNRCC Form TWC-0906. Persons storing UOFs may store up to **six** [three] 55-gallon containers, or the volumetric equivalent, of UOFs without registering as a storage facility.

(b)-(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712555

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 239-6087

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 55. Law Enforcement

Subchapter F. Restricted Wild Animals

31 TAC §§55.201–55.211

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Parks and Wildlife Department proposes the repeal of §§55.201-55.211, concerning the regulation of restricted wild animals. The repeals are necessary to implement the intent of Senate Bill 97, Acts of the 74th Texas Legislature, 1995, which relieves the department of regulatory authority with respect to certain species of non-indigenous wildlife. The repeals will function to remove existing regulations that the department has no statutory authority to administer or enforce after September 1, 1997.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years the repeals as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the repeals.

Mr. Macdonald also has determined that for each of the first five years the repeals as proposed are in effect the public benefit

anticipated as a result of enforcing the repeals as proposed will be the elimination of unenforceable and thereby superfluous regulations.

There will be no effect on small businesses and there are no additional economic costs to persons required to comply with the repeals as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by Government Code, §2001.022, as this agency has determined that the repeals as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed repeals.

Comments on the proposed repeals may be submitted to David Sinclair, Director of Wildlife Enforcement, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4854 or 1-800-792-1112.

The repeals are proposed under the authority of Senate Bill 97, Acts of the 74th Texas Legislature, which removes the department's authority to administer or enforce the provisions of Parks and Wildlife Code, Chapter 12, Subchapter G.

The repeals affect Parks and Wildlife Code, Chapter 12, Subchapter G.

§55.201. *Definitions.*

§55.202. *Permit Requirement.*

§55.203. *Permit Exemption.*

§55.204. *Permit Application.*

§55.205. *Cage Specifications.*

§55.206. *Transportation of Wild Animals.*

§55.207. *Permit Fees.*

§55.208. *General Provisions.*

§55.209. *Change of Address or Relocation of Facilities.*

§55.210. *Permit Revocation.*

§55.211. *Penalty.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712590

Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 389-4642

Chapter 57. Fisheries

Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants

31 TAC §§57.111, 57.113, 57.114, 57.134–57.136

The new sections are proposed under the Parks and Wildlife Code §66.007 which prohibits possession of exotic harmful or potentially harmful shellfish except as authorized by rule or permit, requires permittees to provide proof to the department of the disease free status of the animals and authorizes the department to make rules to carry out these provisions.

The proposed new rules and amendments affect Parks and Wildlife Code §66.007.

§57.111. *Definitions.*

The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

Disease- Contagious pathogens or injurious parasites which may be a threat to the health of natural populations of aquatic organisms.

Disease-Free- A status, based on the results of an examination conducted by a department approved shellfish disease specialist that certifies a group of aquatic organisms as being free of contagious pathogens or injurious parasites.

Harmful or potentially harmful exotic fish-

(A)-(AA) (No change.)

(BB) **Swamp Eels, Rice eels or One-Gilled Eel Family:**

Synbranchidae-all species;

(CC) **Anguillidae-all species except *Anguilla rostrata*;**

Waste- waste shall have the same meaning as in §26.001 of the Texas Water Code.

Water in the state- water in the state shall have the same meaning as in §26.001 of the Texas Water Code.

§57.113. *Exceptions.*

(a)-(b) (No change.)

(c) A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport or sell silver carp (*Hypophthalmichthys molitrix*), black carp (*Mylopharyngodon piceus*, also commonly known as snail carp), bighead carp (*Aristichthys/Hypophthalmichthys nobilis*), **Japanese eel (*Anguilla japonicus*)**, blue tilapia (*Tilapia aurea*), Mozambique tilapia (*Tilapia mossambica*), Nile tilapia (*Tilapia nilotica*), or hybrids between the three tilapia species, as provided by conditions of the permit and these rules.

(d)-(j) (No change.)

(k) A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport and sell Pacific blue shrimp (*Penaeus stylirostris*) provided the exotic shellfish are cultured under quarantine conditions in private facilities located outside the harmful or potentially harmful exotic species exclusion zone, and meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

§57.114. *Health Certification of Exotic Shellfish.*

(a) (No change.)

(b) Any person importing **live** [nauplii of] exotic shellfish from facilities outside the state must **prior to importation:** [provide documentation to the department, of such nauplii, that the producing facility from which the nauplii are to be received has been certified as being free of disease.]

(1) **provide documentation to the department that the shellfish to be imported have been inspected and certified as disease-free by a department-approved shellfish disease specialist; and**

(2) **receive acknowledgment from the department that the requirements of paragraph (b)(1) of this section have been met.**

(c) Any person in possession of [nauplii of] exotic shellfish for the purpose of production of post larvae must provide to the department monthly certification that such **exotic shellfish**[postlarvae] have been examined and are certified to be **disease-free**. [free of disease.] **If certification cannot be provided, the exotic shellfish must be maintained in quarantine condition until the department acknowledges in writing that the stock is disease-free or specifies in writing condition(s) under which the quarantine can be removed.**

(d) Any person in possession of exotic shellfish stocks that experience mortalities shall immediately place the private facility under quarantine condition, immediately notify the department of such mortalities and immediately send samples of the shellfish from the affected portions of the private facility to a department approved shellfish disease specialist for analysis. Results of the required analyses shall be forwarded to the department immediately upon receipt. The private facility, including all infected shellfish stock, shall be required to remain under quarantine condition until the department removes the quarantine in writing or authorizes in writing an appropriate disposal method based on the results of the required analyses. [Any shipment of exotic shellfish received by an Exotic Species permittee must be:]

[(1) certified as being disease free; and]

[(2) maintained under quarantine conditions until the Department acknowledges that the additional stock is free of disease]

(e) **Prior to the commencement of the first discharges for any calendar year from a private facility, the permittee shall conduct clinical testing for disease in at least 25% of the ponds or other structures containing shellfish from which waste will be discharged into or adjacent to water in the state. Thereafter, the permittee shall conduct weekly clinical testing for disease in at least 25% of the ponds or other structures containing shellfish from which waste will be discharged into or adjacent to water in the state. Weekly testing shall be on a rotating basis so that all ponds or other structures containing shellfish from which waste will be discharged into or adjacent to water in the state are subject to testing at some time during any given month. This testing shall continue throughout the time the private facility is discharging waste into or adjacent to water in the state from ponds or other structures containing shellfish. If any of the test results indicate the presence of disease, the results shall be reported to the department immediately. All test results shall be maintained at the address of the permittee and shall be made available for inspection upon request of department personnel at any time during the active life of the permit.** [Prior to removal of

exotic shellfish from quarantine conditions, an Exotic Species Permit holder must have:]

[(1) obtained certification that any new shipment of exotic shellfish imported from outside the state has been examined and found to be free of disease;]

[(2) forwarded a copy of the disease free certification to the department; and]

[(3) received acknowledgment from the department that the shellfish stock is free of disease.]

§57.134. Wastewater Discharge Authority.

(a) An applicant for an initial exotic species permit must provide the following:

(1) written documentation demonstrating that the applicant possesses the appropriate valid wastewater discharge authorization or has received an exemption from the Texas Natural Resource Conservation Commission if the fish farm, fish farm complex or private facility is designed such that a discharge of waste into or adjacent to water in the state will, or is likely to occur; or

(2) adequate documentation to demonstrate that the facility is designed and will be operated in a manner such that no discharge of waste into or adjacent to water in the state will, or is likely to occur.

(b) An applicant for an amendment or a renewal of an exotic species permit must provide the following:

(1) written documentation demonstrating that the applicant possesses or has timely applied for and is diligently pursuing the appropriate wastewater discharge authorization or exemption from the Texas Natural Resource Conservation Commission in accordance with 30 TAC Chapter 321, Subchapter O, if the fish farm, fish farm complex or private facility is designed such that a discharge of waste into or adjacent to water in the state will, or is likely to occur; or

(2) adequate documentation to demonstrate that the facility is designed and will be operated in a manner such that no discharge of waste into or adjacent to water in the state will, or is likely to occur.

(c) An exotic species permittee whose wastewater discharge authorization or exemption is revoked, suspended or annulled by the Texas Natural Resource Conservation Commission will be treated as an applicant for an initial permit under subsection (a) of this section.

§57.135. Memorandum of Understanding between the Texas Parks and Wildlife Department and the Texas Natural Resource Conservation Commission (TNRCC).

The Texas Parks and Wildlife Department (TPWD) incorporates by reference the memorandum of understanding between the Texas Natural Resource Conservation Commission and the TPWD as published in the January 3, 1997 edition of the *Texas Register* (22 TexReg 24) and as adopted by the TNRCC on June 25, 1997.

§57.136. Penalties.

The penalties for violation of this subchapter are prescribed by Parks and Wildlife Code, §66.012.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712592

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 389-4642

31 TAC §57.134, §57.136

The Texas Parks and Wildlife Department (TPWD) proposes repeal of §57.134 and §57.136, amendments to §§57.111, 57.113, and 57.114 and new §§57.134-57.136 concerning Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants.

Amendments to §57.111 will add the families Synbranchidae (rice eels/swamp eels/one-gilled eels) and Anguillidae, except for *Anguilla rostrata*, to the list of harmful or potentially harmful fish species list and add definitions for the terms "disease," "disease-free," "waste," and "water in the state."

Amendments to §57.113 will authorize the sale of Pacific blue shrimp (*Penaeus stylirostris*) when this species is grown in quarantined aquaculture facilities outside the harmful or potentially harmful exotic species exclusion zone.

Amendments to §57.114 will provide for the quarantine of pathogen-infected exotic shellfish, require immediate notification of the Department in the event of mortalities in cultured exotic shellfish stocks, and clarify the requirement for certification of exotic shellfish stocks as disease free by a department approved shellfish disease specialist. The intent of proposed §57.114(e) is that testing of the exotic shellfish for disease shall occur prior to discharge of any water which has been in contact with the exotic shellfish at any time. Thus, even if water is not discharged directly into or adjacent to water in the state; for example, if it is routed from grow out structures through ditches or retention ponds or other structures prior to discharge, the animals which occupied that water must still be tested. TPWD particularly invites comments on the clarity of this subsection.

Proposed new §57.134, concerning Wastewater Discharge Authorization Requirement, will require applicants for amendments and renewals of exotic species permits to demonstrate that they possess or have applied for and are diligently pursuing the appropriate authorization or written exemptions from the TNRCC if the facility is designed such that a discharge of waste into or adjacent to water in the state will or may occur.

Proposed new §57.135, concerning Memorandum of Understanding between the Texas Parks and Wildlife Department and the Texas Natural Resource Conservation Commission, will adopt by reference an MOU establishing a formal mechanism by which TPWD and TNRCC can improve coordination and efficiency regarding the regulation of aquaculture facilities. The text of the MOU was published in the January 3, 1997, issue of the *Texas Register* (22 TexReg 24) and was adopted by TNRCC without changes on June 25, 1997. Proposed new §57.136, concerning Penalties, establishes penalties for violations of these rules.

Robin Reichers, staff economist, has determined that during the first five years these sections as proposed are in effect there

will be fiscal implications to state government as a result of administering and enforcing the sections. However, the extent of this effect is not determinable at this time. There will be no fiscal implications for units of local government.

Mr. Reichers also has determined that for the first five years these sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will be increased protection of aquatic animal life from depletion due to disease.

Some individuals and small businesses may experience a positive economic effect associated with the expanded opportunity for sale of harmful or potentially harmful exotic shrimp species outside the exclusion zone.

TPWD has not filed a local impact statement with the Texas Employment Commission as this agency has determined that the sections as proposed will not impact local economies.

TPWD has not prepared a Takings Impact Assessment for these rules because Government Code, §2007.003 provides an exception to the requirement for rules or proclamations adopted for the purpose of regulating or controlling nonindigenous or exotic aquatic resources.

Written comments on the proposed rules may be submitted to Joedy Gray, Inland Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-8037. Please fax comments to (512) 389-4388. Written comments should be received no later than 5:00 p.m., 30 days from the date of publication of this proposal in the *Texas Register*.

These repeals are proposed under the Parks and Wildlife Code §66.007 which prohibits possession of exotic harmful or potentially harmful shellfish except as authorized by rule or permit, requires permittees to provide proof to the department of the disease free status of the animals and authorizes the department to make rules to carry out these provisions.

The proposed repeals affect Parks and Wildlife Code §66.007.

§57.134. *Penalties.*

§57.136. *Wastewater Discharge Authorization Permit.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712593

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 389-4642



Chapter 69. Resource Protection

Issuance of Marl, Sand and Gravel Permits

31 TAC §69.110, §69.114

The Texas Parks and Wildlife Commission proposes amendment of §69.110 and §69.114, concerning rules for issuance of Marl, Sand and Gravel Permits.

These rules will extend the period of time of validity of new and renewed permits issued pursuant to this chapter from one to three years and increase application fees by approximately 2.5 times.

Paul M. Shinkawa has determined that for the first five year period the rules will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

The additional estimated costs to state and local governments as a result of enforcing or administering the rules are neutral. The estimated reductions in costs to state and local governments as a result of enforcing or administering the rules are neutral. The estimated loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules are neutral. Enforcing or administering the rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

The public benefits anticipated as a result of enforcing the rules as proposed will be a reduction in the procedural steps required for permit holders to continue their business.

The probable economic costs to persons required to comply with the rule are less than required by the current rules.

The department has not filed a local employment impact statement because no impacts on local economies are anticipated by the proposed rules.

Because the subject of the proposed amendments is in all cases public property and no restrictions are imposed by the regulations on the use of private property, there is no takings impact within the purview of the private Real Property Rights Preservation Act, (the Act) Chapter 2007 of the Government Code. Furthermore, there are no governmental actions allowed by the proposed regulations which fall under the purview of the definition of a "taking" in §2007.002(5) of the Act.

Comments on the proposals may be submitted to Paul M. Shinkawa, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4433 or by telefax at (512) 389-8058.

Statutory Authority. These amendments are proposed under Chapter 24, §24.005(b) Parks and Wildlife Code. The proposed amendments affect Parks and Wildlife Code §24.005.

§69.110. *Period of Validity.*

No permit shall be granted for a period longer than **three years** [one years].

§69.114. *Sedimentary Material Permit Application Fees.*

(a) Except as provided in subsection (c) of this section, applications for permits to take or disturb sedimentary material shall be accompanied by the following nonrefundable application fees:

(1) **\$1,200** [\$500] for applications to take sedimentary material for purposes of sale; and

(2) **\$500** [\$200] for all other applications.

(b)-(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712591

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 389-4642



Part X. Texas Water Development Board

Chapter 365. Investment Rules

The Texas Water Development Board (the board) proposes amendments to 31 TAC Chapter 365 regarding Investment Rules. The Board proposes amendments to §§365.2, 365.5, 365.9-365.12, 365.15, and 365.21. The amendments are proposed to bring the rules into compliance with changes made to the Public Funds Investment Act (PFIA) Chapter 2256 of the Government Code by House Bill 2799 effective September 1, 1997.

Section 365.2 is amended to include new definitions added by amendments to the PFIA, to redesignate the Board's investment officer, and to clarify existing definitions. Section 365.5 is amended to be in compliance with PFIA, §2256.026 by noting the board's portfolio will be invested in compliance with federal law. Section 365.9 is amended to change the investment officer's training requirement from annually to once every two years. Section 365.10 is amended to define the personal business relationship between the board's investment officer and a dealer. Amendments to §365.11 provide for an annual review and adoption of the list of authorized dealers. Amendments to §365.12 clarify the selection process of authorized dealers. Sections 365.15 and 365.21 are amended to comply with PFIA, §2256.005(b)(4)(E) and §2256.007, respectively by limiting the payment and delivery of securities on a delivery versus payment method, and by specifying procedures for delivery of the PFIA report.

Ms. Lesa Cochran, Director of Financial Programs, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Cochran also has determined that for each year of the first five years that the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the board's compliance with the Public Funds Investment Act and clarity for both investors and dealers of investments. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new sections as proposed.

Comments on the proposed sections will be accepted for 30 days following publication and may be submitted to Randy Galbreath, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, (512) 463-8479.

General Provisions

31 TAC §§365.2, 365.5, 365.9, 365.10

The amendments are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and the Texas Government Code, Chapter 2256 which requires each State agency to adopt rules regarding the investment of its funds.

There are no statutory provisions affected by the proposed amendments.

§365.2. Definitions.

The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

Dealer-A business organization offering to engage in an investment transaction with [A company which seeks to provide investments to] the board or authority.

Development fund manager-The development fund manager of the Texas Water Development Board [director of the Development Fund Division] or a designated representative.

Internal auditor-The internal auditor employed by the Texas Water Development Board.

Investment officer-The Audit and Funds Manager of the Texas Water Development Board [Cash and Securities Manager of the Development Fund] or any other person authorized by the board or executive administrator to invest funds of the board or authority.

Qualified representative-A person who holds a position with a business organization, who is authorized to act on behalf of the business organization, and who is one of the following:

(A) for a business organization doing business that is regulated by or registered with a securities commission, a person who is registered under the rules of the National Association of Securities Dealers;

(B) for a state or federal bank, a savings bank, or a state or federal credit union, a member of the loan committee for the bank or branch of the bank or a person authorized by corporate resolution to act on behalf of and bind the banking institution; or

(C) for an investment pool, the person authorized by the elected official or board with authority to administer the activities of the investment pool to sign the written instrument on behalf of the investment pool.

§365.5. Policy.

The board will invest the portfolio pursuant to the following principles in order of priority and in conformance with **all federal and state statutes, rules or regulations**[state law]:

(1)-(6) (No change.)

§365.9. Training.

Each member of the board's and authority's governing body, its investment officer and all subordinate investment staff shall attend at least one training session relating to the person's responsibilities within six months after taking office or assuming duties. Thereafter,

the investment officer and investment staff shall attend at least one training session **every two years**[annually]. **The investment officer and investment staff may receive training from any independent source approved by the board.** The training sessions will conform to the requirements of the Texas Government Code, Chapter 2256, Public Funds Investment Act.

§365.10. *Ethics and Conflicts of Interest.*

(a) The investment officer and investment staff shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. The investment officer or investment staff who has a personal business relationship with **a dealer offering to engage in an investment transaction with** [an entity seeking to sell an investment to] the board or authority shall file a statement disclosing that personal business interest to the executive administrator and the internal auditor. The investment officer or investment staff who is related within the second degree by affinity or consanguinity to an individual seeking to sell an investment to the board or authority shall file a statement disclosing that relationship. The statement must be filed with the Texas Ethics Commission and the board.

(b) **An investment officer has a personal business relationship with a business organization if:**

(1) **the investment officer owns 10 percent or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization;**

(2) **funds received by the investment officer from the business organization exceed 10 percent of the investment officer's gross income for the previous year; or**

(3) **the investment officer has acquired from the business organization during the previous year investments with a book value of \$2,500 or more for the personal account of the investment officer.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712556

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Proposed date of adoption: November 20, 1997

For further information, please call: (512) 463-7981



Selection of Authorized Dealers

31 TAC §§365.11, 365.12, 365.15

The amendments are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and the Texas Government Code, Chapter 2256 which requires each State agency to adopt rules regarding the investment of its funds.

There are no statutory provisions affected by the proposed amendments.

§365.11. *Authorized Dealers.*

The investment officer will invest funds through the use of banks and broker/dealers which are approved as authorized dealers. A list of authorized dealers will be maintained by the investment officer. **The finance committee will review, revise and adopt, at least annually, a list of qualified brokers that are authorized to engage in investment transactions with the board.** All primary dealers and secondary dealers requesting qualification as an authorized dealer must submit all of the following information, if applicable, to the development fund manager:

(1) (No change.)

(2) most current audited financial statements showing the net capital of the dealer which clears the securities **or if entity is a subsidiary, financial statements for the entity and the parent company;**

(3)-(7) (No change.)

§365.12. *Selection of Authorized Dealers.*

(a) A primary dealer will automatically be **considered for addition** [added] to the list of authorized dealers upon request and submission of information pursuant to §365.11 of this title (relating to Authorized Dealers).

(b) Only those secondary dealers that meet the following criteria may be **considered and** selected **as authorized dealers** to do business with the board or authority:

(1)-(4) (No change.)

(c) A written copy of the investment policy shall be presented to any dealer **offering to engage in an investment activity with** [seeking to sell to] the board or authority [an authorized investment]. The **qualified representative** [registered principal] of the dealer seeking to sell an authorized investment shall execute a written instrument substantially to the effect that the **dealer** [registered principal] has received and [thoroughly] reviewed the investment policy of the board or authority and acknowledged that the dealer has implemented reasonable procedures and controls in an effort to preclude [imprudent investment activities arising out of] investment transactions conducted between the board or authority and the dealer **that are not authorized by the board's or authority's investment policy, except to the extent that this authorization is dependent on an analysis of the makeup of the board's or authority's entire portfolio or requires an interpretation of subjective investment standards.**

(d)-(g) (No change.)

§365.15. *Delivery, Safekeeping and Custody.*

The board and authority will only make payment for and accept delivery of securities on a delivery versus payment basis[, or any other method recognized as standard practice for specific securities in the securities and banking industries, which would include book entry procedures of the Federal Reserve Bank]. The delivery of the securities will be made to a third party which may include the Texas State Treasury, Texas State Treasury Safekeeping Trust Company, or a national or state bank.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712557

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Proposed date of adoption: November 20, 1997

For further information, please call: (512) 463-7981



Investment Procedures

31 TAC §365.21

The amendments are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and the Texas Government Code, Chapter 2256 which requires each State agency to adopt rules regarding the investment of its funds.

There are no statutory provisions affected by the proposed amendments.

§365.21. *Reporting.*

The investment officer will prepare and present to the board not less than quarterly, a report of investment transactions for all funds. The report, at a minimum, will contain all the requirements specified in Texas Government Code, Chapter 2256, §2256.023 of the Public Funds Investment Act. The report will include a summary for each fund which shows the strategy for each fund and which shows book value, market value, maturity date, yield, **accrued interest**, and purchase cost of each security. **The investment officer shall prepare a report on the Texas Government Code, Chapter 2256, Subchapter A and deliver the report to the board not later than the 180th day after the last day of each regular session of the legislature.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712558

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Proposed date of adoption: November 20, 1997

For further information, please call: (512) 463-7981



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 6. License to Carry Concealed Handgun

Subchapter B. Eligibility and Application Procedures

37 TAC §6.21

The Texas Department of Public Safety proposes an amendment to §6.21, concerning Renewal of License. Amendment to (e) (3) (C) sets the nonrefundable renewal fee for a concealed handgun license at \$70.00.

Tom Haas, Chief of Finance, has determined that for each year of the first five years the rule is in effect there will be an increase in revenue for state government in 1998 of \$918,750.00, in 1999 of \$1,531,250.00, in 2000 of \$1,225,090.00, in 2001 of \$2,147,327.00, and in 2002 of \$1,716,127.00. There will be no fiscal implications for local government as a result of enforcing or administering the section.

Mr. Haas also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be to inform the public that the nonrefundable fee for renewing a concealed handgun license is \$70.00. There will be no effect on small or large businesses. The anticipated cost to persons who are required to comply with the section as proposed will be the \$70.00 nonrefundable renewal fee.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendment is proposed pursuant to Texas Government Code, §411.197 which states the director shall adopt rules to administer this subsection and §411.185 which requires payment of a nonrefundable fee as set by the department.

Texas Government Code, §411.197 and §411.185 are affected by this proposal.

§6.21 *Renewal of License.*

(a)-(d) (No change).

(e) To renew a license, a license holder must:

(1)-(2) (No change).

(3) submit to the department:

(A)-(B) (No change).

(C) payment of a nonrefundable renewal fee **of \$70.00**[as set by the department]; and

(D) (No change).

(f) (No change).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 18, 1997.

TRD-9712649

Dudley M. Thomas

Director

Texas Department of Public Safety

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 424-2890



Part VI. Texas Department of Criminal Justice

Chapter 152. Institutional Division

Subchapter B. Maximum System Capacity of the Institutional Division

37 TAC §152.12

The Texas Department of Criminal Justice proposes an amendment to §152.12, concerning the maximum unit capacity of the Institutional Division. The amendment is permitted by Chapter 499, Subchapter E, Government Code, and by the Final Judgment in *Ruiz v. Collins* CN.H-78-987 (Southern District of Texas, Houston Division), which appeared in the November 27, 1992, issue of the *Texas Register* (17 TexReg 8269).

The effect of the proposed amendment is to allow the Institutional Division to increase trusty camp capacities by constructing a 214-bed permanent addition to the trusty camp at the Ellis Unit, and 107-bed permanent additions to the trusty camps at 18 of the following 19 prison units (the exact list to be determined at a later date): Beto, Central, Clemens, Coffield, Darrington, Eastham, Ferguson, Gatesville, Goree, Jester III, Michael, Pack, Powledge, Ramsey I, Ramsey II, Ramsey III, Retrieve, Texas City Women's Shelter, and Wynne.

Staff finding and recommendation under Government Code, §499.102, and TDCJ officers' review and recommendation under Government Code, §499.104, were completed and provided to the Board of Criminal Justice for their determination whether to make the proposed amendments. Notice to inmates and opportunity for comment under Government Code, §499.103, was initiated on September 9, 1997.

David P. McNutt, Director of Financial Services of the Department of Criminal Justice, has determined that the effect on state government for the first five-year period of operations will be as follows. The amendment would allow a maximum increase in prison beds of 2140, with an estimated combined cost for construction and start-up of \$36,852,595. Operational costs for the next five year period are expected to total \$97,090,215.

The effect on local government for the next five-year period cannot be determined with certainty. While the increased population in the institutional division will delay or eliminate the future accumulation of inmates awaiting transfer held in county jails, the magnitude and duration of the impact cannot be accurately ascertained, given the importance of parole releases to the population dynamics of the system. Funding from the state to counties for contracted capacity cannot, therefore, be accurately ascertained.

The previous listed cost determinations have been forwarded to the Legislative Budget Board under Government Code, §499.102(b).

Mr. McNutt also has determined that the public benefit for the last four years of the next five-year period, when the facilities are operational, will be the public safety benefit of continued

confinement of felony offenders in facilities operated by the state.

The amendment will have no effect on small businesses, as they will not have to comply with the rule. It has been determined that compliance with this amendment will not impose any economic costs on individuals, as no individuals have a duty to comply.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, PO Box 13084, Austin, Texas 78711; Carl.Reynolds@mail.capnet.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposed amendment.

The amendment is permitted by Chapter 499, Subchapter E, Government Code. In conformity with that statute, the proposed amendment cannot take ultimate effect without the acceptance of the recommendations by the governor and the attorney general, under §499.106 and §499.107. The authority of the Board of Criminal Justice to adopt rules generally is found in Government Code, §492.013.

Cross Reference to Statute: Chapter 499, Subchapter E, Government Code.

§152.12. Methodology for Changing the Maximum System Population.

(a)-(i) (No change.)

(j) **In this subsection, "trusty camp addition" refers to a 107-bed dormitory facility added to an existing trusty camp at an existing prison unit, except that, in the case of the Ellis Unit, the addition is a 214-bed dormitory facility. The institutional division may increase system capacity by constructing and operating a substantially self-contained trusty camp addition to the trusty camps at 18 of the following 19 units: Beto, Central, Clemens, Coffield, Darrington, Eastham, Ferguson, Gatesville, Goree, Jester III, Michael, Pack, Powledge, Ramsey I, Ramsey II, Ramsey III, Retrieve, Texas City Women's Shelter, and Wynne.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712567

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 463-9693



Part VII. Texas Commission on Law Enforcement Officer Standards and Education

Chapter 211. Administration Division

37 TAC §211.1

The Texas Commission on Law Enforcement Officer Standards and Education proposes an amendment to §211.1, concerning definitions. The amendment defines the terms "Contract Jail"

and "Contract Jailer," which will be used in proposed new sections regarding contract jailer certification.

D. C. Jim Dozier, Executive Director of the commission, has determined that for the first five-year period that the new section is in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the section.

Mr. Dozier also has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing this section will be clearer understanding of the terms associated with contract jailer certification. There will be no effect on small businesses. There is no anticipated increase in economic costs to individuals who are required to comply with the new section.

Written comments should be submitted to D. C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U. S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 406-3614.

The amendment is proposed under Texas Government Code Annotated, Chapter 415, §415.010, which authorizes the commission to promulgate rules for the administration of Chapter 415.

The following statutes are affected by this proposed amendment: Texas Government Code Annotated, Chapter 415, §415.010-General Powers.

§211.1. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Contract Jail - A correctional facility operated by a county, municipality or a private vendor operating under a contract with a county or municipality to house inmates convicted of offenses committed against the laws of another state of the United States as provided by Texas Government Code, Chapter 511, §511.092.

Contract Jailer - A person employed as a jailer or guard of a contract jail under the provisions of Texas Government Code, §511.092, whose job title may be jailer, detention officer, correction officer, correctional officer, or some similar title but the term does not mean a jailer appointed and employed by the sheriff and paid by the county as defined within these rules or the provisions of the Local Government Code, §85.005.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712424

Edward T. Laine

Chief, Professional Standards and Administrative Operations
Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: December 5, 1997

For further information, please call: (512) 450-0188



Chapter 221. Proficiency Certificates and Other Post-Basic Licenses

37 TAC §221.33

The Texas Commission on Law Enforcement Officer Standards and Education proposes new §221.33, concerning firearms instructor proficiency. The section is proposed to implement a new program to certify firearms instructors for law enforcement.

D. C. Jim Dozier, Executive Director of the commission, has determined that for the first five-year period that the new section is in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the section. The firearms instructor proficiency certificate is not required of any instructor; any costs associated with training to obtain the certificate are incurred solely at the discretion of the individual pursuing the certification or the law enforcement agency requiring it of its instructors.

Mr. Dozier also has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing this section will be improved documentation of the skills of firearms instructors who choose to pursue this certificate, and thereby improved firearms instruction of law enforcement officers in Texas. There will be no effect on small businesses. There is no anticipated increase in economic costs to individuals who are required to comply with the new section.

Written comments should be submitted to D. C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U. S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 406-3614.

The new section is proposed under Texas Government Code Annotated, Chapter 415, §415.010, which authorizes the commission to promulgate rules for the administration of Chapter 415, and §415.062, which authorizes the commission to issue proficiency certificates.

The following statutes are affected by this proposed new section: Texas Government Code Annotated, Chapter 415, §415.010-General Powers.

§221.33. *Firearms Instructor Proficiency.*

(a) A firearms instructor proficiency certificate may be issued to an applicant who:

(1) is not prohibited by state or federal law or rule from attending training related to firearms or from possessing a firearm;

(2) is currently employed or designated by the agency chief administrator or academy coordinator as a firearms instructor;

(3) has never had a license or certificate issued by the commission suspended or revoked;

(4) has three years experience as either a law enforcement officer or a firearms instructor;

(5) currently holds an Instructor License issued by the commission; and

(6) has successfully completed the commission's current firearms instructor course. If application is made prior to March 1, 1999, the applicant may submit for approval a previously completed

40-hour firearms instructor training course in lieu of the commission's current firearms instructor course.

(b) The effective date of this section is March 1, 1998.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712425

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: December 5, 1997

For further information, please call: (512) 450-0188



Chapter 225. Contract Jailer Certification

37 TAC §§225.1, 225.3, 225.5, 225.7, 225.9, 225.11

The Texas Commission on Law Enforcement Officer Standards and Education proposes new §§225.1, 225.3, 225.5, 225.7, 225.9, and 225.11, concerning certification of contract jailers. The new certification program is required by Senate Bill 367, passed during the 75th legislative session, which requires operators of private facilities that contract with cities or counties to hold out-of-state prisoners to ensure that their detention employees are certified by the commission. The commission has modeled this proposed certification program after its existing county jailer licensing program, with the exception that there will be a fee for issuance of contract jailer certificates, and that these certificates will be renewable, rather than permanent. The fees will be phased in over the year following the effective date of the new sections.

D. C. Jim Dozier, Executive Director of the commission, has determined that for the first five-year period that the new sections are in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the section.

Mr. Dozier also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing them will be greater control and monitoring of the training, education, and backgrounds of detention employees of contract jails. The cost to businesses to comply with the proposed new sections will be \$25 for each temporary contract jailer certificate issued, and \$50 for each 2-year renewable contract jailer certificate issued. There may also be additional costs associated with training to comply with the new sections, and with gathering information and documentation associated with certificate applications. There is no anticipated increase in economic costs to individuals who are required to comply with the new section.

Written comments should be submitted to D. C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723, or by facsimile (512) 450-0188.

The new sections are proposed under Texas Government Code Annotated, Chapter 415, §415.010, which authorizes the commission to promulgate rules for the administration of Chapter 415, and §415.062, which authorizes the commission to issue proficiency certificates.

The following statutes are affected by this proposed new sections: Texas Government Code Annotated, Chapter 415, §415.010-General Powers.

§225.1. Issuance of Contract Jailer Certificate.

(a) The commission shall issue a temporary contract jailer certificate or a contract jailer certificate to an individual who:

(1) has completed the training required for the certificate sought;

(2) has received within the past two years a passing score on any examination required for the certificate sought; and

(3) has been submitted for certification or renewal to the commission by the employing contract jail on a signed, completed application for the certificate sought.

(b) The commission shall issue a temporary contract jailer certificate to a person who meets all the minimum standards for that certificate except for training and testing.

(1) A temporary contract jailer certificate expires 12 months from the original certification date, and may not be reissued.

(2) If the application for a temporary contract jailer certificate is submitted after March 1, 1999, the fee for the certificate is \$25. If it is submitted prior to March 1, 1999, no fee is required.

(c) The commission shall issue a contract jailer certificate to a person who meets all the minimum standards for that certificate.

(d) A contract jailer certificate expires 24 months from the date of original issuance and may be renewed upon expiration, unless the certificate has been revoked, is currently suspended, or has been voluntarily surrendered. To qualify for renewal of a certificate, a contract jailer must:

(1) submit a completed contract jailer certificate renewal form prescribed by the commission, including documentation that the certificate holder has completed the required continuing education training within the preceding 24 months; and

(2) pay the required renewal fee of \$50.

(e) The effective date of this section is March 1, 1998.

§225.3. Minimum Standards for Contract Jailer Certificate.

(a) An applicant for a temporary contract jailer certificate or a contract jailer certificate must:

(1) be at least 18 years of age;

(2) be fingerprinted and subjected to a search of local, state and national records and fingerprint files to disclose any criminal record;

(3) not be on court-ordered community supervision or probation for any criminal offense above the grade of Class C misdemeanor;

(4) not have been convicted of a misdemeanor offense above the grade of a Class C misdemeanor within the last five years;

(5) not have ever been convicted at any time of a felony offense;

(6) be of good moral character;

(7) be subjected to a thorough, comprehensive background investigation and be interviewed personally prior to appointment by representatives of the employing contract jail;

(8) meet one of the following minimum educational requirements;

(A) be a high school graduate;

(B) have passed a general educational development (GED) test indicating high school graduation level; or

(C) have 12 semester hours credit from an accredited college or university;

(9) be examined by a licensed physician and be declared in writing within 180 days before the date of employment by the contract jail to show no trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test administered by a licensed physician selected by the employing contract jail;

(10) be examined by a licensed psychologist or psychiatrist and be declared in writing by that professional within 180 days before the date of employment by the contract jail to be in satisfactory psychological and emotional health appropriate to the job of contract jailer. The psychological examination must be conducted pursuant to professionally recognized standards and methods by a licensed psychologist or psychiatrist, selected by the employing contract jail;

(11) not have been discharged from any military service under less than honorable conditions, including, specifically;

(A) under other than honorable conditions;

(B) bad conduct

(C) dishonorable; or

(D) any other characterization of service indicating bad character;

(12) not have had any commission license or certificate denied by final order or revoked, or have a suspension or voluntary surrender of any commission license or certificate currently in effect; and

(13) not violate any commission rule.

(b) The training standards for a contract jailer certificate are successful completion of:

(1) the current basic county corrections course; or

(2) previous training which has been certified by commission staff to be equivalent to the basic county corrections course.

(c) The basic county corrections course shall cover the subjects and be taught in accordance with the current instructor guides provided by the commission. Other appropriate training subjects may be added to the basic county corrections course.

(d) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a certificate and shall not accept employment as a contract jailer.

(e) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(f) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(g) The effective date of this section is March 1, 1998.

§225.5. *Continuing Education for Contract Jailer Certificate.*

(a) A contract jailer certificate holder must complete at least 16 hours of continuing education every 24 months. Failure to complete the required continuing education described in this section will make the certificate holder ineligible for renewal of a contract jailer certificate.

(b) Training in the first 24 month period shall include commission approved training in civil rights, racial sensitivity, and cultural diversity.

(c) The continuing education program completed by contract jailers may consist of additional learning objectives and materials selected or developed by the employing contract jail. The additional topic or topics selected by the employing contract jail should be consistent with the contract jailer's assigned duties. This rule does not limit the maximum number of hours of continuing education a contract jail may provide to each contract jailer it employs.

(d) The effective date of this section is March 1, 1998.

§225.7. *Reporting Responsibilities of Contract Jailers.*

(a) An applicant for a temporary contract jailer certificate or contract jailer certificate is responsible for:

(1) reviewing any applications or other documents and their attachments that the applicant is required to sign; and

(2) signing it only after such review to attest to the accuracy and truthfulness of all information on and attached to the document.

(b) When a person who holds a temporary contract jailer certificate or contract jailer certificate no longer meets the minimum standards for issuance of that certificate, that person must report to the commission in writing within 30 days:

(1) the fact that the certificate holder no longer meets the issuance standards; and

(2) the address to which notice of any commission action will be mailed.

(c) When a person who holds a temporary contract jailer certificate or contract jailer certificate is arrested, charged, or indicted for a criminal offense above the level of Class C misdemeanor, that person must report such fact to the commission in writing within 30 days, including the name of the arresting agency and the style, court, and cause number of the charge or indictment, if any.

(d) A certificate holder must report any name changed by marriage or other reason to the commission within 30 days.

(e) The effective date of this section is March 1, 1998.

§225.9. Reporting Responsibilities of Contract Jail Chief Administrators.

(a) A contract jail chief administrator is responsible for making any reports or submitting any documents required of that entity by the commission.

(b) Prior to the employment by a contract jail of a person who does not hold a contract jailer certificate, a contract jail chief administrator must contact the commission to determine whether the person has a current and valid contract jailer certificate. If the person does not have a valid certificate, the chief administrator must file an application for the certificate with the commission. The application must be approved with a certificate issuance date before the person is employed. The application must be completed, signed, and filed with the commission by the contract jail's chief administrator or designee.

(c) An application for a temporary contract jailer certificate or contract jailer certificate must be submitted on the application form currently prescribed by the commission and must have attached to it two commission applicant fingerprint cards.

(d) A contract jail that files an application for certification must keep on file and in a format readily accessible to the commission and the Commission on Jail Standards a copy of the documentation necessary to show that each temporary contract jailer certificate holder or contract jailer certificate holder appointed by that contract jail met the minimum standards for certification, including specifically:

(1) a computerized criminal history (CCH) check by name, race, sex and date of birth by both TCIC and NCIC;

(2) two completed applicant fingerprint cards;

(3) an original sworn, notarized statement by the applicant;

(A) of his or her complete criminal history; or

(B) that he or she has never been arrested, charged, convicted or placed on probation for a criminal offense;

(4) a certified document from the appropriate authority showing final disposition of each arrest, probation, community supervision, conviction, or any other criminal history that may exist;

(5) an original and current declaration signed by a physician that the applicant is both physically sound and shows no trace of drug dependency or illegal drug use;

(6) an original and current declaration signed by a licensed psychologist or psychiatrist that the applicant is in satisfactory psychological and emotional health to be a private jailer;

(7) a DD-214 or other documentation showing the character of service, if the applicant was ever in the military;

(8) a copy of a valid high school diploma, GED certificate, college transcript, or other documentation necessary to show the applicant meets the education standards for the contract jailer certificate; and

(9) any other documentation required by the commission for that certificate.

(e) The contract jail chief administrator must notify the commission of the appointment of a person who holds a current and valid contract jailer certificate not later than 30 days after the

date of employment. Notification must be made on the currently prescribed commission form that reports employment. This form must be completed, signed and filed with the commission by the contract jail's chief administrator or designee. If the person is hired after a 180-day break in employment, the report of employment must include:

(1) a new criminal history check by name, sex, race and date of birth from both TCIC and NCIC;

(2) a new declaration of psychological and emotional health;

(3) a new declaration of lack of any drug dependency or illegal drug use; and

(4) an original sworn, notarized statement by the applicant

(A) of his or her complete criminal history, or

(B) that he or she has never been arrested, charged, convicted, or placed on probation for a criminal offense.

(f) A contract jail must retain a copy of records required under this section for a minimum of five years after the employee's termination date with the contract jail. The records must be maintained in a format readily accessible to the commission and to the Texas Commission on Jail Standards.

(g) A contract jail which submits an application for an individual must report to the commission any failure to employ that individual in the reported capacity within 30 days of the reported date of employment. Such report must be made on a currently prescribed commission form that reports termination.

(h) A contract jail chief administrator shall notify the commission in writing within 30 days when it receives information that a person employed with that entity has been arrested, charged, indicted, or convicted for any offense for which confinement may be a punishment.

(i) Except in the case of a commission error, a contract jail chief administrator who wishes to report a change to any information within commission files about a certificate holder shall do so in a signed, written request to the commission, containing:

(1) the certificate holder's name and social security number;

(2) the requested change; and

(3) the reason for the change.

(j) When a person who holds a contract jailer certificate or a temporary contract jailer certificate resigns from employment with a contract jail or if a person's employment is terminated for any reason, the contract jail shall submit a report to the commission on the currently prescribed commission form that reports resignation or termination. The report shall be submitted within 30 days following the date of resignation or termination.

(k) The effective date of this section is March 1, 1998.

§225.11. Enforcement - Contract Jailer Certificate.

(a) The commission may deny an application for a temporary contract jailer certificate or contract jailer certificate if:

(1) the applicant has not been reported to the commission as meeting all minimum standards, including any training or testing requirements;

(2) the applicant has not affixed any required signature;

(3) the required forms are incomplete;

(4) the required documentation is incomplete, illegible, or is not attached;

(5) the application is not submitted or signed by a chief administrator, or a designee;

(6) the contract jail fails to provide documentation, if requested, of the entity's creation or authority to appoint persons in the capacity of the certificate sought or the entity is without such authority; or

(7) the application contains a false assertion by any person.

(b) The commission may cancel a temporary contract jailer certificate or contract jailer certificate if:

(1) the commission issued the certificate in error when the recipient had not met the minimum standards or requirements for the issuance of the certificate; or

(2) the commission issued the certificate as a result of incorrect information furnished to the commission indicating that the recipient was entitled to the certificate when, in fact, the recipient was not entitled to the certificate.

(c) The commission may suspend a temporary contract jailer certificate or contract jailer certificate if the certificate holder:

(1) violates any provision of these sections;

(2) is convicted of a criminal offense; or

(3) is charged with the commission of a misdemeanor, adjudication is deferred, and the certificate holder is placed on community supervision.

(d) Unless otherwise specified, the term of suspension shall be 12 months. The exceptions are as follows:

(1) If a judgment and sentence is entered resulting in a misdemeanor conviction and sentence of either a fine, a jail term or both, or community supervision, then, regardless of the actual sentence imposed, the term of suspension shall be essentially equal to the maximum potential confinement applicable to that offense, except for DWI, for which the term of suspension shall be 24 months.

(2) If the court's judgment or adjudication is deferred for any felony or serious misdemeanor and the certificate holder is then placed on community supervision, the term of suspension shall be equal to the actual time served on community supervision.

(e) If a certificate can be suspended for a community supervision or misdemeanor conviction, the commissioners may, in their discretion and upon proof of mitigating factors, probate all or part of the suspension term during a probation term of up to twice the maximum suspension term, or issue a written reprimand in lieu of suspension.

(1) A suspension or probation may be ordered to run concurrently or consecutively with any other suspension or probation.

The beginning date of a probation must be within the term of suspension.

(2) If a certificate can be suspended for any other reason, the commission, through its executive director may either:

(A) probate all or part of the suspension term during a probation term of up to twice the maximum suspension term; or

(B) issue a written reprimand in lieu of suspension.

(3) If probated, a suspension may not be probated for less than six months.

(4) The commission may impose reasonable terms of probation.

(5) A probated certificate remains probated until:

(A) the term of suspension has expired;

(B) all other terms of probation have been fulfilled;

(C) a written request for reinstatement has been received by the commission from the certificate holder unless the probation has been revoked by the commission for violation of probation; or

(D) until revoked.

(f) A suspended certificate remains suspended until:

(1) the term of suspension has expired and the term of court-ordered community supervision has been completed, and a written request for reinstatement has been received from the certificate holder; or

(2) the remainder of the suspension is probated.

(g) The commission shall immediately revoke a temporary contract jailer certificate or contract jailer certificate issued by the commission if the certificate holder is or has been convicted of a felony offense under the laws of this state, another state, or the United States as provided in paragraphs (1)-(4) of this subsection.

(1) A deferred adjudication community supervision is not a felony conviction.

(2) A person is convicted of a felony when an adjudication of guilt on a felony offense is entered against that person by a court of competent jurisdiction whether or not:

(A) the sentence is subsequently probated and the person is discharged from community supervision;

(B) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense;

(C) the cause has been made the subject of an expunction order; or

(D) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(3) Revocation of a certificate shall permanently disqualify a person from certification and a certificate may not be reinstated except when the certificate holder proves the facts supporting the revocation have been negated, such as:

(A) the felony conviction has been reversed or set aside on direct or collateral appeal, or a pardon based on subsequent proof of innocence has been issued;

(B) the report alleged to be false or untruthful was found to be truthful; or

(C) the section was not violated.

(4) During the direct appeal of any felony conviction, a certificate may be conditionally revoked pending resolution of the mandatory direct appeal. The certificate will remain revoked unless and until the holder proves that the conviction has been set aside on appeal. The holder of any revoked certificate may informally petition the executive director for reinstatement of that certificate based upon proof by the certificate holder that the facts supporting the revocation have been negated. If granted, the executive director shall inform the commissioners of such action no later than at their next regular meeting. If denied informally, the holder of a revoked certificate may petition the commission for a hearing to determine reinstatement based upon the same proof.

(h) Upon any denial or cancellation of a temporary contract jailer certificate or contract jailer certificate, the applicant may request a hearing at which the commission must prove sufficient facts to support its action. After such hearing, the commission may issue a final order of denial or cancellation.

(i) The commission may cancel, suspend, or revoke a temporary contract jailer certificate or contract jailer certificate even though it has become inactive by some other means, such as expiration.

(j) A temporary contract jailer certificate or contract jailer certificate holder may permanently or temporarily voluntarily surrender a certificate for any reason.

(1) A certificate holder may voluntarily surrender any certificate by sending, or causing to be sent, a signed, written request to the executive director, who may accept or reject the request. The signed written request shall indicate that the certificate holder understands and has knowledge of the consequences of the document being signed. The executive director may accept requests for voluntary surrender submitted to the commission in any other form that indicates the certificate holder intends to voluntarily surrender the certificate to the commission. The executive director may liberally construe the intent of any request and may, specifically, construe the surrender of any single commission certificate to be a surrender of all other certificates held unless the request expressly states otherwise. The surrender should include a summary of the reason for the surrender.

(2) If accepted, the holder is not longer certified under either type of surrender effective on the beginning date of the surrender, and until such person applies for and meets the requirements of a new certificate.

(3) A term, or temporary, surrender shall have its ending date stated in the request. Any request without a stated ending date shall be construed as a permanent surrender. A permanent surrender shall have no ending date.

(k) The effective date of the cancellation, suspension, or revocation shall be:

(1) any date agreed to by both parties which is no earlier than the date of the rule violation;

(2) the date of the commission final order is entered in a contested case or the date it becomes effective, if that order is appealed.

(l) The executive director shall inform the commissioners of any denial, reprimand, probation, cancellation, suspension, or revocation no later than at their next regular meeting.

(m) Once final action has been taken to deny, cancel, reprimand, suspend, probate, or revoke a certificate, the commission shall search its files and send, by regular mail, notice of the action to the chief administrator of any agency shown to have the certificate holder under either current or latest appointment.

(n) The effective date of this section is March 1, 1998.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712426

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: December 5, 1997

For further information, please call: (512) 450-0188

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 148. Facility Licensure

Subchapter A. Licensure Information

General Provisions

40 TAC §148.2

The Texas Commission on Alcohol and Drug Abuse proposes an amendment to §148.2, concerning licensure information. These rules establish exemptions from licensure. The amendment provides an exemption for faith-based chemical dependency treatment programs registered with the commission. The amendment is proposed to implement new provisions of Texas Health and Safety Code, §464.52, which was adopted during the 75th session of the Texas Legislature.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Ms. Bleier also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will exemption from licensure for faith-based chemical dependency treatment programs. There will be no effect on small businesses. There are no anticipated

economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753.

The amendment is proposed under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the proposed rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.2. License Required.

A facility providing chemical dependency treatment in Texas shall have a license issued by the commission unless it is:

(1)-(5) (No change).

(6) the private practice of a licensed health care practitioner or licensed chemical dependency counselor who personally renders individual or group services within the scope of the practitioner's license and in the practitioner's individual office; [or]

(7) **a religious organization registered under Chapter 145 of this title (relating to Faith-Based Chemical Dependency Treatment Programs); or** [a 12-step or similar self-help chemical dependency recovery program:

[(A) that does not offer or purport to offer a chemical dependency treatment program;

[(B) that does not charge program participants; and

[(C) in which program participants may maintain anonymity.]

(8) **a 12-step or similar self-help chemical dependency recovery program:**

(A) **that does not offer or purport to offer a chemical dependency treatment program;**

(B) **that does not charge program participants; and**

(C) **in which program participants may maintain anonymity.**

[(b) The facility shall have a license certificate for each program and site.]

[(c) A licensed facility shall have written approval from the commission before accepting court commitments.]

[(d) A facility shall not compensate a counselor trainee for performing counseling, assessments, or intervention before receiving written approval as a clinical training institution from the commission.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712363

Mark S. Smock

Deputy for Finance and Administration

Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption: October 27, 1997

For further information, please call: (512) 349-6609



Part IV. Texas Commission for the Blind

Chapter 163. Vocational Rehabilitation Program

Subchapter A. General Information

40 TAC §163.4

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission for the Blind or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission for the Blind proposes the repeal of §§163.4, 163.10, 163.11, 163.17, 163.28, 163.36, and 163.52 of Chapter 163, pertaining to the agency's administration of the vocational rehabilitation program, and simultaneously proposes the adoption of corresponding new sections. The repeals are necessary because the U.S. Secretary of Education has amended the regulations governing the State Vocational Rehabilitation Services Program to implement changes to the Rehabilitation Act of 1973 and the sections needed to be revised substantially.

The Commission's enabling statutes require the agency to cooperate with the federal government in providing vocational rehabilitation services, to comply with federal conditions required to secure the full benefits of the federal laws, and to provide services to individuals eligible under federal law. The new regulations made few substantive changes to current agency practice; however, terminology changed considerably. Bringing state rules into conformity with federal language will reduce possible misunderstandings by consumers and the public about services allowed under the Rehabilitation Act and the conditions the Commission must follow.

The proposed new sections contain revised definitions used in the administration of the vocational rehabilitation program, application procedures, eligibility criteria, the conditions under which a person's case will be closed, a list of services allowed by federal law, the conditions under which a person receives services, and the order in which persons will be served in the event the agency needs to implement an order of selection in times of limited funds.

The rules in §163.28 that pertain to academic support have been modified substantially in accordance with federal guidelines. Federal regulations prohibit agencies from using funds for academic training unless maximum efforts have been made by both the agency and the consumer to secure grant assistance from other sources to pay for the training. Agencies may also establish a preference for in-state services, which is reflected in the new section. The Commission has also clarified and revised its rules in accordance with federal guidelines that state that agencies are not responsible for those costs in excess of the cost of the in-state service if a consumer chooses an out-of-state service at a higher cost than an in-state service, if either service would meet the individual's rehabilitation

needs. In response to past consumer comments and the Commission's emphasis on consumer choice, the Commission has eliminated its previous rule that limits academic training support to a course of study required for entry-level employment.

Pat D. Westbrook, Executive Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Westbrook also has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rules will be a clear public understanding of the vocational rehabilitation program in Texas and a rulebase that conforms to federal regulations. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the rule.

Questions about the content of this proposal may be directed to Jean Crecelius at (512) 459-2611 and written comments on the proposal may be submitted to Policy and Rules Coordinator, P.O. Box 12866, Austin, Texas 78711, within 30 days from the date of this publication.

The repeal is proposed under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The repeal affects Human Resources Code, Title 5, §91.021 concerning responsibility for visually handicapped persons, §91.023 concerning rehabilitation services, §91.052 concerning the vocational rehabilitation program for the blind, and §91.055 concerning eligibility for vocational rehabilitation services.

§163.4. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712515

Pat D. Westbrook

Executive Director

Texas Commission for the Blind

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 459-2611



40 TAC §163.4

The new sections are proposed under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The new sections affect Human Resources Code, Title 5, §91.021 concerning responsibility for visually handicapped persons, §91.023 concerning rehabilitation services, §91.052 concerning the vocational rehabilitation program for the blind, and §91.055 concerning eligibility for vocational rehabilitation services.

§163.4. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Applicant-An individual who has submitted an application for vocational rehabilitation services in accordance with §163.10 of this title (relating to application).

Assistive technology device-Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a consumer.

Assistive technology service-Any service that directly assists a consumer in the selection, acquisition, or use of an assistive technology device.

Blind (person who is)-A person whose visual acuity with best correction is 20/200 or less in the better eye, or a person with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees, which means a visual field of no greater than 20 degrees in the better eye.

Comparable services and benefits-Services and benefits that are provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits; available to the consumer at the time needed to achieve the intermediate rehabilitation objectives in the individual's individualized written rehabilitation program (IWRP); and commensurate to the services that the consumer would otherwise receive from the commission.

Competitive employment-Work that is performed on a full-time or part-time basis in an integrated setting and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

Consumer-An individual with a disability determined eligible for vocational rehabilitation services under the provisions of §163.11 of this title (relating to eligibility).

Day-Unless specifically denoted otherwise, refers to one calendar day.

Employment outcome-A person's entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment that is consistent with the consumer's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

Extended employment-Work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

Extended services-As used in the definition of "Supported employment," the ongoing support services and other appropriate services that are needed to support and maintain an individual with a most severe disability in supported employment and that are provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under 34 CFR part 361, 34 CFR part 363, 34 CFR part 376, or 34 CFR part

380, after an individual with a most severe disability has made the transition from support provided by the commission.

Extreme medical risk-A probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

Integrated setting-

(A) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals;

(B) With respect to an employment outcome, a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those applicants or eligible individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons.

Individual with a disability-an individual with a visual impairment that constitutes or results in a substantial impediment to employment, and who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

Individual with a most severe disability-an individual with a severe disability who:

(A) is seriously limited in four or more functional capacities (such as the inability to obtain or retain employment independently, obtain a driver's license without special optical accommodations, care for self independently, access standard print, travel independently, socially interact with others, access technology without special adaptations, or manage one's home independently) in terms of an employment outcome;

(B) requires, in addition to comprehensive assessment, counseling, guidance, and employment assistance, at least four other substantial VR services; and

(C) needs services for a period of at least six months.

Individual with a severe disability-an individual with a disability:

(A) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(B) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

Individualized Written Rehabilitation Program (IWRP)-A written record that documents all phases of the consumer's rehabilitation process as developed by the counselor and the consumer.

Maintenance-Monetary support authorized in an IWRP for those expenses, such as food, shelter, clothing, that are in excess of the normal expenses of a consumer or an applicant receiving extended evaluation services and that are necessitated by the person's participation in a program of vocational rehabilitation services.

Ongoing support services-As used in the definition of "supported employment," services that are needed to support and maintain a person with a most severe disability in supported employment, identified based on a determination by the commission of the person's needs as specified in an IWRP; and furnished by the commission from the time of job placement until transition to extended services, unless post-transition services are provided, following transition; and thereafter by one or more extended services providers throughout the person's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment.

Personal assistance services-A range of services provided by one or more persons that is designed to assist a consumer to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.

Physical and mental restoration services-The following services:

(A) corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(B) diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws;

(C) dentistry;

(D) nursing services;

(E) necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(F) drugs and supplies;

(G) prosthetic, orthotic, or other assistive devices, including hearing aids,

(H) eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws;

(I) podiatry;

(J) physical therapy;

(K) occupational therapy;

(L) speech or hearing therapy;

(M) mental health services;

(N) treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(O) special services for the treatment of consumers with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(P) other medical or medically-related rehabilitation services. Physical or mental impairment—An injury, disease, or other condition that materially limits, or if not treated is expected to materially limit, mental or physical functioning.

Post-employment services—One or more of the goods and services identified in §163.25 of this title (relating to Goods and Services) that are provided subsequent to the achievement of an employment outcome and that are necessary to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests.

Rehabilitation engineering—The systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

Rehabilitation technology—The systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

Representative—Any individual chosen by an applicant or consumer, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the applicant or consumer, in which case the court-appointed representative is the representative.

Self-employment services—Services that assist a consumer to earn income directly from their own business, trade, or profession rather than a specified salary or wages from an employer. Not included within the definition is self-employment within the Business Enterprises Program administered by the commission.

Substantial impediment to employment—a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) that hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

Supported employment—Competitive work in an integrated setting with ongoing support services for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after transition in order to perform this work, or transitional employment for individuals with the most severe disabilities due to mental illness.

Supported employment services—ongoing support services and other appropriate services needed to support and maintain an individual with a most severe disability in supported employment.

Transition services—A coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement

from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

Transitional employment—As used in the definition of "supported employment," a series of temporary job placements in competitive work in integrated work settings with ongoing support services for persons with the most severe disabilities due to mental illness.

Transportation—Travel and related expenses that are necessary to enable a person to participate in any vocational rehabilitation service.

Visual impairment—A visual acuity, with best correction, of 20/70 or less in the better eye, or a visual field of 30 degrees or less in the better eye, or a combination of both.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Pat D. Westbrook
Executive Director

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Subchapter B. Basic Program Requirements

40 TAC §§163.10, 163.11, 163.17

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission for the Blind or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The repeal affects Human Resources Code, Title 5, §91.021 concerning responsibility for visually handicapped persons, §91.023 concerning rehabilitation services, §91.052 concerning the vocational rehabilitation program for the blind, and §91.055 concerning eligibility for vocational rehabilitation services.

§163.10. *Application.*

§163.11. *Eligibility.*

§163.17. *Case Closure.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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The new sections are proposed under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The new sections affect Human Resources Code, Title 5, §91.021 concerning responsibility for visually handicapped persons, §91.023 concerning rehabilitation services, §91.052 concerning the vocational rehabilitation program for the blind, and §91.055 concerning eligibility for vocational rehabilitation services.

§163.10. Application.

(a) A person is considered to have submitted an application when the individual or the individual's representative, as appropriate:

- (1) has completed and signed the agency's application form or has otherwise requested services;
- (2) has provided information necessary to initiate an assessment to determine eligibility and priority for services; and
- (3) is available to complete the assessment process.

(b) Persons residing in institutions, such as state schools, state hospitals, or prisons, may apply for services when their release is expected within 60 days.

§163.11. Eligibility.

(a) An applicant's eligibility for vocational rehabilitation services shall be based on the following requirements:

- (1) The applicant must have a visual impairment.
- (2) The applicant's visual impairment must constitute or result in a substantial impediment to employment for the applicant.
- (3) Subject to §163.12 of this title (relating to Presumption of Benefit), the applicant must be capable of benefiting in terms of an employment outcome from the provision of vocational rehabilitation services.
- (4) The applicant must require vocational rehabilitation services to prepare for, enter into, engage in, or retain gainful employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

(b) No duration of residence requirement is imposed that excludes from services any applicant who is present in the State;

(c) No applicant or group of applicants shall be excluded or found ineligible solely on the basis of the type of disability.

(d) The eligibility requirements shall be applied without regard to the age, gender, race, color, creed, or national origin of the applicant.

(e) The eligibility requirements shall be applied without regard to the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

§163.17. Case Closure.

(a) The Commission shall close a case when the person's rehabilitation plan has been completed and the person has been determined to have achieved and maintained continuous employment

commensurate with the established employment goal for a minimum of 90 days, or sooner if:

- (1) The Commission is unable to locate or contact the person.
- (2) The person's disability is so severely limiting that there is little chance the person can be vocationally rehabilitated or the person's medical condition is expected to progress to such a severely limiting degree in a fairly short period of time that rehabilitation services will be of little or no help.
- (3) The person has refused services or further services.
- (4) The person has died.
- (5) The person has been institutionalized.
- (6) The person has been determined to have no disabling condition.
- (7) The person has refused to cooperate with the commission.
- (8) Transportation is not feasible or available.
- (9) The person has been determined to have no impediment to employment.
- (10) The person's case has been transferred to another agency.

(b) Case closure is made with the full knowledge of the person when the person is available.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter C. Vocational Rehabilitation Services

40 TAC §163.28, §163.36

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission for the Blind or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The repeal affects Human Resources Code, Title 5, §91.021 concerning responsibility for visually handicapped persons, §91.023 concerning rehabilitation services, §91.052 concerning the vocational rehabilitation program for the blind, and §91.055 concerning eligibility for vocational rehabilitation services.

§163.28. Vocational and Other Training Services.

§163.36. Personal Assistance Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §163.28, §163.36

The new sections are proposed under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The new sections affect Human Resources Code, Title 5, §91.021 concerning responsibility for visually handicapped persons, § 91.023 concerning rehabilitation services, §91.052 concerning the vocational rehabilitation program for the blind, and §91.055 concerning eligibility for vocational rehabilitation services.

§163.28. Vocational and Other Training Services.

(a) All equipment purchased by the commission for the purpose of training shall remain the property of the commission.

(b) Academic training in institutions of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) shall be subject to the following:

(1) Academic training in vocational schools and technical institutes shall be provided only in schools that are certified by the State of Texas.

(2) No academic training shall be paid from vocational rehabilitation funds unless maximum efforts have been made by the agency and the consumer to secure grant assistance in whole or in part from other sources to pay for such training.

(3) The consumer must contact the college or university to determine what grants, loans, or scholarships may be available; must apply for SSI or SSDI; and must complete any paperwork required to apply for such grants, loans, or scholarships.

(4) The PELL grant, like any other comparable services and benefits, shall be applied to the educational process prior to the expenditure of commission funds for services under this section. Services shall not be denied pending receipt of a PELL grant, but shall be contingent upon the consumer's making application if eligible.

(5) Academic training shall be provided through public tax-supported colleges and universities in Texas unless:

(A) a specific curriculum related to the student's academic major is not available at a Texas public institution, or

(B) academic training elsewhere is determined to be more economical, or

(C) academic training elsewhere provides specialized services needed by the consumer, such as services provided at Gallaudet University for students who are deaf.

(6) If the consumer chooses to obtain academic training out of Texas and the provisions in subparagraph (5) of this section do not apply, academic support shall be limited to that which the person would receive if they attended a state-supported college or university in Texas.

(7) Consumers who are blind and who do not meet the residency requirements of a particular institution and are not eligible for tuition exemption under the Texas Education Code, §54.205, may receive tuition assistance from the commission regardless of economic need of the consumer; however, such payments shall not exceed the tuition paid for a student who does meet the residency requirements.

(8) Tuition and fee exemption is an exemption from payment of tuition and/or required fees normally charged by a state-supported college or university. Required fees include student services, building use, health center, lab fees, and property deposits not reimbursable to the student. Required fees do not include optional fees.

(9) Any equipment purchased for a consumer during academic training must be needed by the consumer to help maintain academic success so the vocational goal can be met.

(10) Academic training shall not include continuing education required for maintaining certification in a field in which an individual is already gainfully employed.

(11) If a consumer is blind and is attending a non-tax-supported college or university, tuition and fees may be paid by the commission regardless of economic need of the consumer. However, the commission shall not pay tuition and fees in excess of the college or university's published rate for training. If the college or university does not have a published rate, tuition and fees shall be paid at rates in accordance with a written agreement between the college or university and the commission.

(12) Once admitted to academic training:

(A) a consumer must maintain and complete a full-time course load as defined by the college or university. This requirement may be waived if:

(i) the person is a graduating senior;

(ii) the person is an incoming freshman (first two semesters or quarters);

(iii) the person is a returning adult (first academic year only);

(iv) the person is in summer school; or

(v) other extenuating circumstances prevent the consumer from participating in a full-time course load.

(B) The consumer shall meet with the counselor at least once each semester, shall submit add or drop slips as changes occur, and shall provide grade slips or transcripts to the counselor at the end of each semester.

§163.36. Personal Assistance Services.

Personal assistance services are designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter D. Order of Selection for Services

40 TAC 163.52

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission for the Blind or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The repeal affects Human Resources Code, Title 5, §91.021 concerning responsibility for visually handicapped persons, §91.023 concerning rehabilitation services, §91.052 concerning the vocational rehabilitation program for the blind, and §91.055 concerning eligibility for vocational rehabilitation services.

§163.52. Order of Selection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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The new sections are proposed under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The new sections affect Human Resources Code, Title 5, §91.021 concerning responsibility for visually handicapped persons, §91.023 concerning rehabilitation services, §91.052 con-

cerning the vocational rehabilitation program for the blind, and §91.055 concerning eligibility for vocational rehabilitation services.

§163.52. Order of Selection.

(a) If it becomes necessary, due to limited funds, for the Commission to operate under an order of selection, vocational rehabilitation services shall be provided according to the following priorities:

(1) Priority 1-Persons who meet the definition of individual with a most severe disability.

(2) Priority 2-Persons who meet the definition of individual with a severe disability.

(3) Priority 3-Persons who meet the definition of individual with a disability.

(b) Within the priorities listed in subsection (a) of this section, special consideration and priority are given to public safety officers whose visual impairments are sustained in the line of duty.

(c) To inquire if the agency is operating under the order of selection, a person may contact any commission office, including the central office at 4800 North Lamar, Austin, Texas, toll-free 800-252-5204.

(d) In the event the order of selection is implemented, the commission shall:

(1) implement the order of selection on a statewide basis;

(2) notify all eligible individuals of the priority categories in the order of selection, their assignment to a particular category, and their right to appeal their category assignment;

(3) continue to provide all needed services to any consumer who has begun to receive services under an IWRP prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and

(4) ensure that its funding arrangements for providing services under the State plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the commission shall renegotiate these funding arrangements so that they are consistent with the order of selection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part IV. Texas Commission for the Blind

Chapter 163. Vocational Rehabilitation Program

The Texas Commission for the Blind proposes amendments to §§163.5, 163.12, 163.13, 163.15, 163.16, 163.18, 163.25, 163.26, 163.29, 163.30, 163.31, 163.32, 163.33, 163.34, 163.37, 163.38, 163.39, 163.61, 163.62, and 163.65, pertaining to the agency's vocational rehabilitation program. The U. S. Secretary of Education has amended the regulations governing the State Vocational Rehabilitation Services Program to implement changes to the Rehabilitation Act of 1973. The Commission's enabling statutes require the agency to cooperate with the federal government in providing vocational rehabilitation services, to comply with federal conditions required to secure the full benefits of the federal laws, and to provide services to individuals eligible under federal law. The Commission has amended its rules accordingly in line with the revised regulations.

The majority of the proposed amendments are to bring state rules into conformity with federal language to reduce possible misunderstandings by consumers and the public about services allowed under the Rehabilitation Act and the conditions the Commission must follow, including actions the agency takes before suspending, reducing, or terminating any planned service, which are included in §163.18. Where the new federal regulations resulted in multiple changes and revisions to other sections in this chapter, the sections have been rewritten and are being proposed for repeal and simultaneous adoption in their new form in a separate submission.

The Commission is also taking this opportunity to make technical changes to verb forms where needed to clarify mandatory provisions and to propose the deletion of scholarships and fellowships from the Commission's definition of monthly income in §163.62.

Pat D. Westbrook, Executive Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Westbrook also has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rules will be a clear public understanding of the vocational rehabilitation program in Texas and a rulebase that conforms to federal regulations to assure full federal funding of the program. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the rule.

Questions about the content of this proposal may be directed to Jean Crecelius at (512) 459-2611 and written comments on the proposal may be submitted to Policy and Rules Coordinator, P. O. Box 12866, Austin, Texas 78711, within 30 days from the date of this publication.

Subchapter A. General Information

40 TAC §163.5

The amendment is proposed under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The amendment affects Human Resources Code, Title 5, §91.021 concerning responsibility for visually handicapped persons, §91.023 concerning rehabilitation services, §91.052 concerning the vocational rehabilitation program for the blind, and §91.055 concerning eligibility for vocational rehabilitation services.

§163.5. Appeals of Determinations.

The agency's appeal process shall be available to applicants and consumers who wish to contest a determination made by a rehabilitation counselor concerning eligibility for services, the denial **and furnishing** of services, and the termination of services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter B. Basic Program Requirements

40 TAC §§163.12, 163.13, 163.15, 163.16, 163.18

The amendments are proposed under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The amendments affect Human Resources Code, Title 5, §91.021 concerning responsibility for visually handicapped persons, §91.023 concerning rehabilitation services, §91.052 concerning the vocational rehabilitation program for the blind, and §91.055 concerning eligibility for vocational rehabilitation services.

§163.12. Presumption of Benefit.

(a) An applicant **shall be** [is] presumed capable of benefiting in terms of an employment outcome unless the commission **demonstrates** [determines], based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services [as a result of the severity of the applicant's disability]. With respect to situations in which the issue concerns the severity of the applicant's disability and potential for employment outcome, the commission conducts an extended evaluation pursuant to provisions in §163.15 of this title (relating to Extended Evaluation for Persons with Severe Disabilities).

(b) "Clear and convincing evidence" means a high degree of certainty. Clear and convincing evidence might include, but is not limited to, a description of assessments, including situational assessments and supported employment assessments **from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability**[by possible service providers within a reasonable distance from the person's community concluding that they would be unable to meet the person's needs due to the severity of the person's disability].

- (c) (No change.)

§163.13. Eligibility Determination Time Frame.

(a) Eligibility or ineligibility **shall be** [is] determined no longer than 60 days after the person, or the person's representative, as appropriate, has signed and submitted an application for vocational rehabilitation services in accordance with provisions of §163.10 of this title (relating to Application).

(b) Exceptions to exceeding the 60-day time frame for determining eligibility or ineligibility may occur only when:

- (1) (No change.)

(2) the applicant, or the applicant's representative, as appropriate, agrees **to a specific extension of time** [that the extension of time is warranted]; or

- (3) (No change.)

(c) Eligibility **shall be** [is] determined prior to applying Subchapter D of this chapter (relating to Order of Selection for Payment of Services) and Subchapter E of this chapter (relating to Consumer Participation in the Payment of Services).

§163.15. Extended Evaluation for Persons with Severe Disabilities.

- (a) (No change.)

(b) An extended evaluation period **shall not** [does] not exceed 18 months.

- (c) (No change.)

(d) **During the extended evaluation period, a written plan for determining eligibility and for determining the nature and scope of services required to achieve an employment outcome shall be developed, and only those services that are necessary to make these two determinations shall be provided during the period**[All rehabilitation services may be provided to an applicant certified for extended evaluation services except job placement, occupational tools and licenses, on-the-job training, and vocational training].

(e) The applicant's IWRP **shall be**[is] reviewed at least once every 90 days during the extended evaluation period.

(f) The commission **shall** [may] terminate an extended evaluation at any point during the 18-month extended evaluation period when the commission determines that there is **sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or there is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome** [clear and convincing evidence that the applicant is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome, or there is not clear and convincing evidence to overcome the presumption that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.]

§163.16. Ineligibility Determination.

(a) The commission **shall make** [makes] a determination of ineligibility only after providing an opportunity for full consultation with the **individual** [applicant], or as appropriate, with the **individual's** [applicant's] representative.

(b) The commission **shall inform** [informs] the **individual** [applicant] in writing, **supplemented** [or] by special modes of com-

munication **consistent with the informed choice of the individual, if necessary** [appropriate], of the ineligibility determination, including the reasons for the determination, the requirements under this chapter, and the means by which the applicant may express and seek remedy for any dissatisfaction, including the procedures for review of a determination by the counselor.

(c) The commission **shall provide** [provides] the **individual** [applicant] with a description of services available from the client assistance program established under 34 CFR Part 370 **and information on how to contact that program.**

(d) The commission **shall review** [reviews the] **any ineligibility determination based on a finding that the individual is incapable of achieving an employment outcome** within 12 months, **and annually thereafter if requested by the individual or the individual's representative**, unless the **individual** [person] has refused the review, the **individual** [person] is no longer present in Texas, the **individual's** [person's] **whereabouts is unknown, or the individual's** [person's] **medical condition is rapidly progressive or terminal.**

(e) In the case of an ineligibility determination subsequent to the provision of services under an IWRP based on a determination that the person is incapable of achieving an employment outcome, the commission reviews the ineligibility determination annually thereafter only if requested by the applicant, or, if appropriate, by the applicant's representative.]

§163.18. Individualized Written Rehabilitation Program (IWRP).

- (a) (No change.)

(b) The commission **shall advise** [advises] each consumer or, as appropriate, the consumer's representative, of all commission procedures and requirements affecting the development and review of an IWRP, including the availability of special modes of communication.

(c) In developing an IWRP **for a student with a disability who is receiving special education services** [transitioning student], the commission **shall consider** [considers] the student's individualized education program.

(d) The IWRP **shall be** [is] reviewed with the consumer, or as appropriate, the consumer's representative, as often as necessary, but at least once each year, to assess the consumer's progress in meeting the objectives identified in the IWRP.

(e) The counselor **shall incorporate** [incorporates] into the IWRP any revisions that are necessary to reflect changes in the consumer's vocational goal, intermediate objectives, or vocational needs.

(f) The counselor **shall provide** [provides] the consumer, or, as appropriate, the consumer's representative, with a copy of the IWRP and its amendments, in the mode of communication specified by the consumer **or representative.**

(g) The data used for preparing the IWRP **shall be** [is] the information necessary to satisfy federal requirements and to adequately document a consumer's plan of services.

(h) **Prior to suspending, reducing, or terminating any planned service in the IWRP, the agency shall send written notification of intent to the consumer's last known address.**

(i) The agency shall suspend, reduce or terminate a consumer's planned services no sooner than 10 working days after written notification has been mailed to the consumer.

(j) The Commission shall not institute a suspension, reduction, or termination of services being provided under an IWRP in instances in which the consumer has filed a request for a formal hearing or informal review, pending final resolution unless the individual or, in an appropriate case, the individual's representative so requests or the agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter C. Vocational Rehabilitation Services

40 TAC §§163.25, 163.26, 163.29, 163.30, 163.31-163.34, 163.37-163.39

The amendments are proposed under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The amendments affect Human Resources Code, Title 5, §91.021 concerning responsibility for visually handicapped persons, §91.023 concerning rehabilitation services, §91.052 concerning the vocational rehabilitation program for the blind, and §91.055 concerning eligibility for vocational rehabilitation services.

§163.25. *Goods and Services.*

(a) (No change.)

[(b) A minimum of 30 days from the date of application is required before the commission initiates services other than assessments for determining eligibility, unless the consumer meets the definition of blind and does not need physical restoration services.]

(b) [(c)] Services are provided only when planned in advance and contained in the consumer's IWRP.

(c) [(d)] Subject to the **limitation** [limitations] prescribed in **subsection** [subsections] (b) [and (c)] of this section, the following vocational rehabilitation services are available on an as-needed basis:

- (1) assessment to determine eligibility;
- (2) assessment to determine vocational rehabilitation needs;
- (3) **Vocational rehabilitation counseling and guidance;**
- (4) physical and mental restoration services;

(5) vocational and other training services, **including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds received under the provisions of the Act unless maximum efforts have been made by the commission and the individual to secure grant assistance in whole or in part from other sources to pay for that training;**

(6) maintenance as defined in §163.5 of this title (relating to Appeals of Determinations) [for additional costs incurred while participating in rehabilitation];

(7) transportation as defined in §163.5 of this title;

(8) vocational rehabilitation services to family members **of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome;**

(9) interpreter services and note-taking services for persons who are deaf and tactile interpreting for persons who are deaf-blind;

(10) reader services, rehabilitation teaching services,[note-taking services,] and orientation and mobility;

(11) recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate public services employment;

(12) job search, placement assistance, and job retention services;

(13) personal assistance services **as defined in §163.5 of this title;**

(14) post-employment services **as defined in §163.5 of this title;**

(15) occupational licenses, tools, equipment, and initial stocks and supplies;

(16) transition services **as defined in §163.5 of this title;**

(17) referral services;

(18) supported employment services **as defined in §163.5 of this title;**

(19) rehabilitation technology services **as defined in §163.5 of this title;** and

(20) other goods and services **determined necessary for the individual with a disability to achieve an employment outcome** [necessary to render an individual with a disability employable].

(d) [(e)] **If comparable services or benefits exist under any other program and are available to the consumer at the time needed to achieve the rehabilitation objectives in the individual's IWRP, the commission shall use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services** [The agency uses, to the maximum extent possible and allowed, comparable services and benefits from other sources for all services to be provided under this chapter].

(e) If comparable services or benefits exist under any other program, but are not available to the consumer at the time needed to satisfy the rehabilitation objectives in the individual's IWRP, the commission shall provide vocational rehabilitation services until those comparable services and benefits become available.

(f) The following services are exempt from a determination of the availability of comparable services and benefits:

(1) Assessment for determining eligibility and priority for services.

(2) Assessment for determining vocational rehabilitation needs.

(3) Vocational rehabilitation counseling, guidance, and referral services.

(4) Vocational and other training services, such as personal and vocational adjustment training, books (including alternative format books accessible by computer and taped books), tools, and other training materials in accordance with subsection (d)(5) of this section.

(5) Placement services.

(6) Rehabilitation technology.

(7) Post-employment services consisting of the services listed under subsection (b)(1)-(6) of this section.

(g) The requirements of paragraph (e) of this section also do not apply if:

(1) the determination of the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any consumer who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional; or

(2) an immediate job placement would be lost due to a delay in the provision of comparable services and benefits.

§163.26. Assessment for Determining Eligibility, Vocational Rehabilitation Needs, and Assessment for Rehabilitation Technology.

(a)-(b) (No change.)

(c) A comprehensive assessment is limited to information that is necessary to identify the rehabilitation needs and to develop the rehabilitation program for the consumer, but may, to the extent needed, include the following:

(1) a comprehensive analysis of pertinent medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, **and related functional limitations**, that affect the employment and rehabilitation needs of the consumer;

(2) an analysis of the consumer's personality, **career** interests, interpersonal skills, intelligence and related **functional capacities** [functions], educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities;

(3)-(4) (No change.)

(d) In preparing the comprehensive assessment, the commission **shall use** [uses], to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information, information provided by the consumer, and information provided by the consumer's family **and education agencies**.

§163.29. Maintenance.

Maintenance needed for the consumer **or applicant receiving extended evaluation** to receive all services except diagnostic services is subject to application of Subchapter E of this title (relating to Consumer Participation in Payment of Services).

§163.30. Transportation.

(a) (No change.)

(b) Transportation available to the consumer without cost to the commission **shall be** [is] used first.

(c) Transportation provided by a consumer **shall be**[is] reimbursed at a rate no more than the [state] rate **authorized for state employees traveling on official business** .

(d) (No change.)

§163.31. Services to Family Members.

(a) Services to family members are provided only if without such services the consumer would be unable to begin or to continue [their] **the consumer's** rehabilitation program, and the program would be jeopardized or interfered with to the extent that the consumer's employment would be unnecessarily delayed or could not be achieved.

(b) (No change.)

(c) **Family member, for purposes of receiving vocational rehabilitation services in accordance with this section, means an individual:**

(1) **who either is a relative or guardian of an applicant or eligible individual or lives in the same household as an applicant or eligible individual;**

(2) **who has a substantial interest in the well-being of that individual; and**

(3) **whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.**

§163.32. Interpreter Services and Note-taking Services for Individuals Who are Deaf and Tactile Interpreting for Individuals Who are Deaf-Blind.

If available, the commission **shall use** [uses] interpreters certified by the Texas Commission for the Deaf and Hard of Hearing or by the Registry of Interpreters in the delivery of services to persons who are deaf or deaf-blind.

§163.33. Reader Services, Rehabilitation Teaching Services, [Note-Taking Services], and Orientation and Mobility Services.

(a) Reader services **shall be** [are] available only to consumers who are blind and who are receiving vocational or academic training.

(b) (No change.)

(c) The maximum amount allowed per month for reader services **shall be** [is] calculated according to the number of semester

hours the student is taking, whether during a fall, spring or summer semester, and whether the student is an undergraduate or graduate student. The rate of reimbursement is available from any commission office during work hours.

(d) The commission **shall** [does] not pay for reader services rendered by a member of the consumer's family.

(e)-(f) (No change.)

§163.34. Post-Employment Services.

(a)-(b) (No change.)

[(c) Technology-related post-employment services may be considered up to 12 months after the consumer's case has been closed.]

§163.37. Transition Services.

(a) Transition services are based upon the individual student's needs, taking into account the student's preferences and interests, and **shall** include instruction, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(b) **Transition services must promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives identified in the student's IWRP.**

§163.38. Supported Employment Services.

(a) A consumer may receive supported employment services if:

(1) the consumer is **an individual with a most severe disability** [a person who is most severely disabled], and

(2) the comprehensive assessment of rehabilitation needs of the consumer identifies supported employment as the appropriate **employment outcome** [rehabilitation objective].

(b)-(c) (No change.)

(d) **Ongoing services provided to the consumer during supported employment services shall include an assessment of employment stability and provision of specific services, or the coordination of services at or away from the worksite that are needed to maintain stability.**

(e) **Ongoing services provided to the consumer during supported employment services shall consist of the following:**

(1) **any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in this part;**

(2) **the provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;**

(3) **job development and placement;**

(4) **social skills training;**

(5) **regular observation or supervision of the individual;**

(6) **follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the indi-**

viduals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(7) **facilitation of natural supports at the worksite;**

(8) **any other service or similar service identified in the scope of vocational rehabilitation services described in §163.25 of this title (relating to Goods and Services).**

§163.39. Rehabilitation Technology Services.

(a) Assistive technology devices are purchased only after evaluation of individual need and cost. Simple and less expensive alternatives **shall be** [are] considered first.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712525

Pat D. Westbrook

Executive Director

Texas Commission for the Blind

Proposed date of adoption: November 3, 1997

For further information, please call: (512) 459-2611



Subchapter E. Consumer Participation in Cost of Services

40 TAC §§163.61, 163.62, 163.65

The amendments are proposed under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The amendments affect Human Resources Code, Title 5, §91.021 concerning responsibility for visually handicapped persons, §91.023 concerning rehabilitation services, §91.052 concerning the vocational rehabilitation program for the blind, and §91.055 concerning eligibility for vocational rehabilitation services.

§163.61. Scope of Subchapter.

All vocational rehabilitation services are subject to this subchapter except the following:

(1)-(2) (No change.)

(3) **vocational rehabilitation** counseling, guidance, and referral services by commission staff;

(4)-(11) (No change.)

§163.62. Definitions.

As used in this subchapter, the following words or terms have the following meanings unless the context clearly indicates otherwise.

Monthly income – Income derived from:

(A)-(C) (No change.)

[(D) scholarships and fellowships;]

(D) [(E)] public assistance payments;

- (E) [(F)] assistance from private welfare agencies;
- (F) [(G)] income from stock dividends and bond interest;
- (G) [(H)] income from child support payments;

(H) [(I)] income from self-employment, which is defined as gross receipts, minus allowable Internal Revenue Service expenses, from one's own business which results in income. Gross receipts include the value of all goods sold and services rendered. Expenses include the cost of goods purchased, rent, utilities, wages and salaries paid, and business taxes (not personal income taxes or self-employment social security taxes);

(I) [(J)] any available pension or insurance, including Social Security Disability Income (SSDI); health/hospitalization insurance plans; workers' compensation; veterans' benefits; Old Age and Survivors Insurance (OASI) from the Social Security Administration; labor union insurance and/or health and welfare benefits; and unemployment compensation; and

- (J) [(K)] participation in savings plans.

§163.65. Allowed Adjustments to Calculate Net Monthly Income.

It is not the intent of the commission to impose a financial hardship upon a family; therefore, monthly income is adjusted to net monthly income by subtracting the following:

- (1) (No change.)

(2) **disability-related expenses paid by the consumer, including** medical payments as a result of disability and/or illness of family member,

- (3)-(4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712526

Pat D. Westbrook

Executive Director

Texas Commission for the Blind

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For further information, please call: (512) 459-2611



Part XX. Texas Workforce Commission

Chapter 835. Self-Sufficiency Fund

The Texas Workforce Commission (the Commission) proposes new §§835.1-835.3, §§835.11-835.15, and §§835.31-835.33, concerning the establishment and operation of the Self-Sufficiency Fund.

The Commission is implementing a new and innovative system of workforce training and services throughout the State of Texas. One aspect of this new system is the Self-Sufficiency Fund. The cooperation of and input from all interested parties is essential to ensure the success of this endeavor. The Commission welcomes comments regarding the Self-Sufficiency Fund from all interested parties.

One of the primary goals of the Commission is to prepare, place and retain individuals in employment. The Commission is also required by Texas Labor Code, §301.001(b) to meet the needs of the businesses of this state for the development of a highly skilled and productive workforce as well as meeting the needs of the workers of this state for education and skills. Texas Labor Code, §302.021(a) placed under the authority of the Commission employment programs under Texas Human Resources Code, Chapter 31 and the Job Opportunities and Basic Skills program under Social Security Act Part F Subchapter IV (42 U.S.C. §682). The Commission is specifically directed to assist individuals in making the transition into the workforce from public assistance. The 75th Legislature in House Bill 1 (1997) has directed the Commission to develop a Self-Sufficiency Fund to work with employers and training organizations to provide training for targeted employment for Temporary Assistance for Needy Families (TANF) recipients as a strategy to increase long term success in retention of employment by those TANF recipients.

The prospective private partner and the proposed training provider will seek input from the Local Workforce Development Board before completing an application for funding from the Self-Sufficiency Fund.

It is the goal of the Commission for all participants entering a training program under the Self-Sufficiency Fund to successfully complete the program and become self sufficient. However, a successful completion rate of 85% of the individuals enrolled in a project will be considered to be acceptable performance under a Self-Sufficiency Fund contract. In extraordinary circumstances, the Director may authorize a completion rate of less than 85% because of the special circumstances of the project funded.

The proposed rules describe the operation of the Self-Sufficiency Fund. Section 835.1 states the purpose and goal of the Self-Sufficiency Fund is to aid in the transition of TANF recipients to the workforce. Section 835.2 defines the terms used in the rules. Section 835.3 lists the uses of the fund including the development of customized training plans and necessary support services. Section 835.11 lists the project objective of providing training for TANF recipients through programs throughout the state in order to meet required TANF participation rates. Section 835.12 provides that the fund will be administered by the Commission. Section 835.13 lists the possible limitations on funds awarded. Section 835.14 describes the procedure to be used in making an application for a Self-Sufficiency Fund award. Section 835.15 describes the procedure to be used by the Commission in evaluating the proposals submitted. Section 835.31 lists the responsibilities of a grant recipient of a Self-Sufficiency Fund award. Section 835.32 lists the reports which must be filed by the grant recipient. Section 835.33 describes the requirements which must be met in order to obtain payment on a Self-Sufficiency Fund contract.

Randy Townsend, Director of Finance, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed Self-Sufficiency Fund rules. Mr. Townsend has certified that there will be no foreseeable impact on local economies or overall employment

as a result of enforcing or administering the proposed Self-Sufficiency Fund rules.

Mr. Townsend also has determined that for each of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the provision of necessary job training to TANF recipients. There is no anticipated adverse impact on small business as a result of enforcing or administering the proposed Self-Sufficiency Fund rules. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

All official comments submitted to Richard Hall, Director of Business Services, will be considered before the final rules are adopted. Comments on the proposed rules may be submitted to Richard Hall, Director of Business Services, Texas Workforce Commission Building, 101 East 15th Street, Room 504T, Austin, Texas 78778, (512) 463-8844. Comments may also be submitted via fax to Mr. Hall at (512) 463-2799 or e-mailed to: rhall@twc.state.tx.us.

Comments must be received by the Commission by November 3, 1997 for consideration.

Subchapter A. General Provisions Regarding the Self-Sufficiency Fund

40 TAC 835.1–835.3

The new rules are proposed under Texas Labor Code, §301.061, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of this Act.

The proposed rules affect Texas Labor Code, Chapter 302, particularly §302.002 and §302.021.

§835.1. *Purpose and Goal.*

(a) The purpose of the Self-Sufficiency Fund is to provide training for targeted employment opportunities for Temporary Assistance for Needy Families (TANF) recipients.

(b) The goal of the fund is to help TANF recipients receive training leading to a job which allows them to become and remain independent of financial assistance provided under Texas Human Resources Code, Chapters 31 and 33.

§835.2. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Commission—The Texas Workforce Commission or an employee or employees designated by the Director to administer the Self-Sufficiency Fund.

Community-based organization (CBO)—A private nonprofit organization which provides for education, vocational education, rehabilitation, job training, or internship services and programs and includes development corporations, union-related organizations, faith-based organizations and employer-related organizations. The CBO must be certified as a 501(c)3 nonprofit organization under the IRS Code of 1986. A CBO providing services which are regulated by the state must provide evidence of required certification, license or registration.

Customized job training project—A project designed by a prospective private partner or trade union in partnership with a public community or technical college, extension service, or community-based organization for the purpose of providing specialized workforce training to prospective employees of the prospective private partner or members of the trade union with the intent of expanding the workforce.

Director—The Executive Director of the Texas Workforce Commission or the Executive Director's designee.

Extension service—A higher education agency and service established by the Board of Regents of the Texas A&M University System.

Grant recipient—A public community or technical college, community-based organization, or the extension service awarded a grant from the Self-Sufficiency Fund.

Local Workforce Development Board (Board)—A Local Workforce Development Board as created under the Workforce and Competitiveness Act and certified by the Governor as provided for in Texas Government Code, §2308.261. In a Local Workforce Development Area for which a Board has not been certified, the Commission or an entity operating a career center in that area may assume the responsibilities of a Board under this chapter.

Prospective private partner—A person, sole proprietorship, partnership, corporation, association, consortium, or private organization which submits a joint proposal for a customized job training project in partnership with a public community or technical college, a community-based organization, or extension service.

Public community college—A state funded two-year educational institution primarily serving its local taxing district and service area in Texas and offering vocational, technical and academic courses for certification or associate degrees.

Public technical college—A state funded coeducational institution of higher education offering courses of study in vocational and technical education, for certification or associate degrees.

Self-Sufficiency—Employment with wages reasonably calculated to make the employee independent of financial assistance under Texas Human Resources Code, Chapters 31 and 33.

TANF recipient—A person who receives financial assistance under Texas Human Resources Code, Chapter 31.

Trade union—An organization, agency or employee committee, in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

Training provider—A public community or technical college, community-based organization, or extension service which provides training.

§835.3. *Uses of the fund.*

(a) The Self-Sufficiency Fund may be used by a public community or technical college, community-based organization, or Extension Service for the following job-training purposes:

(1) to develop customized job training projects for individuals who are recipients of financial assistance under Texas Human Resources Code, Chapter 31;

(2) to develop customized job training projects for prospective private partners, trade unions, and small and medium-

sized business consortiums participating in projects which receive funding; and

(3) for support services, deemed reasonable and necessary by the Commission for participants to prepare and participate in training activities and to make the transition from training activities to employment.

(b) Only those support services specifically described in a contract under this subsection may be charged to a contract funded with Self-Sufficiency Fund monies.

(c) The Self-Sufficiency Fund may not be used for the purchase of any proprietary or production equipment for the training project of a single employer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 23, 1997.

TRD-9712656

J. Randel Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: November 3, 1997

For further information, please call: (512) 463-8812



Subchapter B. Project Administration

40 TAC §§835.11-835.15

The new rules are proposed under Texas Labor Code, §301.061, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of this Act.

The proposed rules affect Texas Labor Code, Chapter 302, particularly §302.002 and §302.021.

§835.11. *Project Objectives.*

The objectives of the Self-Sufficiency Fund are:

(1) to provide training for targeted employment to allow TANF recipients to achieve self-sufficiency;

(2) to the extent practicable, to provide Self-Sufficiency Fund services in all areas of the state; and

(3) to assist the state in its efforts to meet TANF statewide participation rates and assist individuals receiving public assistance in entering the workforce.

§835.12. *Grant Administration.*

(a) The Commission shall administer the Self-Sufficiency Fund.

(1) The Director, or a person appointed by the Director who is knowledgeable in the administration of grants, shall be responsible for the distribution of money from the Fund.

(2) The Director shall ensure that employers and training providers work together to propose training and employment for a specific number of trainees.

(b) Proposals requesting funding for a project may be submitted from any area of the state. Proposals must be reasonable in

scope and utilize all available resources, including private contributions as well as local, state and federal funds.

§835.13. *Limitations on Awards.*

The Commission may impose any or all of the following limitations on the funds awarded under any specific grant:

(1) a limit of \$500,000 for training needs of a single employer;

(2) a limit of 10% of the grant award for the allowable purchase of any proprietary or production equipment required for the training project for a consortium of employers; and

(3) a limit of 10% of the grant award for administrative costs related to the direct training needs of a single employer.

§835.14. *Procedure for Requesting Funding.*

(a) After obtaining the review and comments of the Board(s), a prospective private partner and training provider shall present to the Director a joint proposal requesting funding for a project which meets the objectives of the Self-Sufficiency Fund.

(b) Proposals shall be written and contain the following information:

(1) the number of trainees to be trained and employed;

(2) a brief outline of the proposed customized job training project including methods of assessment, skills to be taught, and strategies for successfully meeting the needs of trainees;

(3) the occupation for which training will be provided, the wages to be paid during the first year of employment for a trainee who successfully completes the training program, the proposed timeline to achieve self-sufficiency, and the employment benefits provided by the private partner;

(4) a budget summary identifying all sources of funding for the project and specifying the amount requested from the Self-Sufficiency Fund;

(5) names of all of the entities which will be directly providing training and education services, a description of the training and educational services to be provided by each entity, as well as a description of the prior experience and demonstrated performance in directly providing training or education services to the targeted population;

(6) completed checklist of information on the training provider's financial management system; and

(7) any other factors unique to the circumstances of the project which should be considered.

§835.15. *Procedure for Evaluation.*

(a) The Director's evaluation of each proposal shall include consideration of the:

(1) information contained in the written proposal;

(2) project objectives;

(3) prior experience and performance in the provision of direct training and education by the entity providing training and education services; and

(4) verification of good standing for any required certification, license, or registration for training providers.

(b) Priority shall be given to proposals which utilize all available resources, including private contributions as well as local, state and federal funds.

(c) If the Commission determines that a proposal is appropriate for funding through the Self-Sufficiency Fund and funding is available, the Director may enter into a contract with the grant recipient on behalf of the Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 23, 1997.

TRD-9712658

J. Randel Hill

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-8812



Subchapter C. Project Administration After Award of Contract

40 TAC §§835.31-835.33

The new rules are proposed under Texas Labor Code, §301.061, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of this Act.

The proposed rules affect Texas Labor Code, Chapter 302, particularly §302.002 and §302.021.

§835.31. *Grant Recipient's Responsibilities.*

(a) The grant recipient shall serve as fiscal agent, administer the contract, and in cooperation with the private partner submit financial and performance reports to the Commission.

(b) The grant recipient shall maintain fiscal data needed for independent verification of expenditures of funds received for the customized job training project for three years after the termination of the contract.

(c) All requests for contract amendments must be made in writing by the grant recipient. Contract amendments must be written and must be executed by the Director before the implementation of a change to the contract.

§835.32. *Contract Completion Reports.*

No later than 90 days following the end of the contract period for the customized job training project, the grant recipient shall provide the Commission with the following information:

(1) a copy of any audit performed on the customized job training project;

(2) the number of trainees placed in jobs, in which occupations they were placed, the wages for those occupations, and the number of trainees who have achieved self-sufficiency at the completion of the customized job training project;

(3) a narrative report by the grant recipient summarizing the customized job training project results, which shall include documentation that the training objectives and outcomes specified in the contract have been achieved, and may include brief narratives by employers evaluating the customized job training project's effectiveness in meeting their needs;

(4) payroll records and/or reports certified by the employer that provide the name, social security number, occupation, and the trainee's wage at the completion of the training; and

(5) a detailed accounting of the expenditure of funds received under the contract.

§835.33. *Contract Payment.*

Payment under a contract will be contingent upon the Director's determination that the project has met the training objectives, outcomes, and requirements specified in the contract. While the goal of all self-sufficiency projects is to have all individuals participating in training successfully complete the program, an attrition rate of no more than 15% will be considered acceptable contract performance. In special circumstances, at the end of the contract period, the Director may allow an attrition rate as set in the contract based on the total number of trainees to be trained. The final payment of 25% of the grant amount will be withheld until 90 days after the completion of training and after receipt by the Commission of verification that the trainees are employed in jobs which will lead to self-sufficiency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-9712657

J. Randel Hill

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-8812



ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 309. Operation of Racetracks

Subchapter A. General Provisions

Operations

16 TAC §309.60

The Texas Racing Commission adopts an amendment to §309.60, concerning the possession, sale, and consumption of alcoholic beverages in the stable or kennel area of a pari-mutuel racetrack. The amendment is adopted without changes to the proposed text published in the July 22, 1997 issue of the *Texas Register* (22 TexReg 6812). The amendment was presented to the Commission as a petition for rulemaking under 16 Tex. Admin. Code §307.303. The petitioner is the Texas Quarter Horse Association, the officially designated breed registry for quarter horses in Texas. The amendment is adopted to ensure that a pari-mutuel racetrack will be able to offer the sale of alcoholic beverages in conjunction with sales and other special events, which will have the effect of promoting the horse and greyhound racing industries.

The amendment establishes a procedure by which the Commission may grant to a racetrack a temporary waiver of the general prohibition relating to alcoholic beverages in the stable or kennel area. The waiver may only be granted for a special event and is subject to certain conditions.

No comments were received regarding the adoption of the proposal.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 16, 1997.

TRD-9712403

Paula C. Flowerday

General Counsel

Texas Racing Commission

Effective date: October 15, 1997

Proposal publication date: July 22, 1997

For further information, please call: (512) 833-6907

TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 61. School Districts

Subchapter CC. Commissioner's Rules Concerning School Facilities

19 TAC §61.1032

The Texas Education Agency (TEA) adopts new §61.1032, concerning instructional facilities allotment. The new section specifies the method for determining allotments, the application process, relevant definitions, and requirements for school district information. The new section is adopted with changes to the proposed text as published in the August 12, 1997, issue of the *Texas Register* (22 TexReg 7442).

In House Bill 5, the 75th Texas Legislature repealed the school facilities assistance grant program and replaced it with the Instructional Facilities Allotment. The new program operates to equalize access to funding through a guaranteed yield approach for new debt, either as school district bonds or as lease-purchase arrangements. The legislature appropriated \$100 million each year of the current biennium to fund the state's share of the debt service costs.

The following changes have been made since the section was proposed.

In §61.1032(k)(3), the last sentence was expanded to clarify that the 90-day time period, relating to the date of sale/pricing or authorizing order, actually constitutes an extension that begins with the prospective date identified in the application.

In §61.1032(s), the September 1, 1997, date has been amended to September 8, 1997, to conform with the actual closing date for the initial application cycle.

The following public comments have been received regarding adoption of the new section.

Issue: the effect of temporary provisions that control how districts apply and receive allotments in the first application cycle.

Comment. The law firm of Leonard & Hurt and Boles Independent School District (ISD) commented that the requirements for eligibility make it difficult for some districts to participate in the initial application cycle because lease-purchase arrangements must have completed the 60-day waiting period to be considered. The initial application cycle did not allow for a 60-day period to elapse from the time the application was distributed to the closing date for the application cycle.

Agency Response. The agency does not agree to change the closing date of the initial application cycle. The initial application cycle is intended to cover primarily indebtedness which already exists and which will significantly impact tax rates for the first time in the 1997-1998 school year. Some allowance was made for school districts which had taken significant action to plan for a new debt that would occur early in the fall of 1997, and which would impact tax rates for the 1997 tax year. A second cycle of applications will end December 15, 1997, in which districts that did not meet the eligibility requirements of the first cycle will have an opportunity to receive an allotment.

Issue: The calculation of tax rates for Texas Education Code, (TEC), Chapter 42, in lease-purchase arrangements.

Comment. Boles ISD commented that the proposed rule requires that the local share of the allotment be subtracted from the tax effort recognized in TEC, Chapter 42, for guaranteed yield purposes. This may result in less ability to use lease-purchase arrangements for financing facilities than if no such reduction was made.

Agency Response. The agency does not agree to change the calculation of tax rates for TEC, Chapter 42, purposes for lease-purchase arrangements. The basis of this reduction in tax effort for TEC, Chapter 42, guaranteed-yield purposes is the statutory provision in TEC, §46.004, that directs that the local share of the lease-purchase be treated as bond taxes for purposes of TEC, Chapter 46. Senate Bill 1873 amended the calculation of tax effort for purposes of the guaranteed yield in TEC, Chapter 42, to specifically exclude taxes collected to pay the local share of the cost of an instructional facility for which the district receives assistance under TEC, Chapter 46. It is believed that the legislative intent of these provisions was to prevent credit for tax effort from being given simultaneously for the same funds under more than one state aid formula.

Issue: Forms of debt eligible for state assistance under the instructional facilities allotment.

Comment. Boles ISD and Kenedy ISD commented that the proposed rule requires that a lease-purchase be in the form authorized by Local Government Code, §271.004, which inhibits the use of other financing arrangements, such as time warrants.

Agency Response. The agency does not agree to make the proposed change. The statute does not define the term "lease-purchase". The agency believes the limitation of lease-purchase arrangements to those authorized under Local Government Code, §271.004, best reflects legislative intent.

The new section is adopted under the Texas Education Code, §46.002, as added by House Bill 4, 75th Texas Legislature, which authorizes the commissioner of education to adopt rules for the administration of the Instructional Facilities Allotment.

§61.1032. Instructional Facilities Allotment.

(a) Definitions. The following definitions apply to the instructional facilities allotment governed by this section:

(1) Instructional facility - real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by Texas Education Code (TEC), §28.002.

(2) Noninstructional facility - a facility that may occasionally be used for instruction, but the predominant use is for purposes other than teaching the curriculum required by TEC, §28.002.

(3) Necessary fixture - equipment necessary to the use of a facility for its intended purposes, but which is permanently attached to the facility such as lighting and plumbing.

(4) Debt service - as used in this section, debt service shall include payments of principal and interest on bonded debt or the amount of a payment under an eligible lease-purchase arrangement.

(b) Application process. A school district must complete an application requesting funding under the Instructional Facilities Allotment. The commissioner may require supplemental information to be submitted at an appropriate time after the application is filed to reflect changes in amounts and conditions related to the debt. The application shall contain at a minimum the following:

(1) a description of the needs and projects to be funded with the debt issue or other financing, with an estimate of cost of each project and a categorization of projects according to instructional and noninstructional facilities or other uses of funds;

(2) a description of the debt issuance or other financing proposed for funding, including a projected schedule of payments covering the life of the debt;

(3) an estimate of the weighted average maturity of bonded debt; and

(4) drafts of official statements or contracts that fully describe the debt, as soon as available.

(c) District eligibility. All school districts legally authorized to enter into eligible debt arrangements as defined in subsection (d) of this section are eligible to apply for an Instructional Facilities Allotment.

(d) Debt eligibility. In order to be eligible for state funding under this section, a debt service requirement must meet all of the criteria of this subsection.

(1) The debt service must be an obligation of the school district which is entered into pursuant to the issuance of bonded debt under TEC, Chapter 45, Subchapter A; an obligation for refunding bonds as defined in TEC, §46.007; or an obligation under a lease-purchase arrangement authorized by Local Government Code, §271.004.

(2) The taxes levied for the eligible bonded debt were first levied for the 1997 tax year or later and collected in the 1997-1998 school year or later. The first payment under a lease-purchase

arrangement must be scheduled to occur on or after September 1, 1997.

(3) Eligible bonded debt must have a weighted average maturity of at least eight years. The term of a lease-purchase agreement must be for at least eight years. For purposes of this section, a weighted average maturity shall be calculated by dividing bond years by the issue price, where "bond years" is defined as the product of the dollar amount of bonds divided by 1,000 and the number of years from the dated date to the stated maturity, and "issue price" is defined as the par value of the issue plus accrued interest, less original issue discount or plus premium.

(4) Funds raised by the district through the issuance of bonded debt must be used for an instructional facility purpose as defined by TEC, §46.001. The facility acquired by entering into a lease-purchase agreement must be an instructional facility as defined by TEC, §46.001.

(5) If the bonded debt is for a refunding or a combination of refunding and new debt, the refunding portion must meet the same eligibility criteria with respect to dates of first debt service as a new issue.

(6) Application for funding of the bonded debt service or lease-purchase payments must be made prior to the sale of the bonds or the passage of an order by the school district board of trustees authorizing a lease-purchase arrangement.

(e) Biennial limitation on access to allotment. The cumulative amount of new debt service for which a district may receive approvals for funding within a biennium shall be the greater of \$100,000 per year or \$250 per student in average daily attendance per year. A district may submit multiple applications for approval during the same biennium. Timely application before the sale of bonds or authorizing order for a lease-purchase must be made to ensure eligibility of the debt for program participation. The calculation of the limitation on assistance shall be based on the highest annual amount of debt service that occurs within the state fiscal biennium in which payment of state assistance begins. Increases in debt service payment requirements in subsequent biennia must receive approval through additional applications. The limitation on the allotment for subsequent biennia shall be the total dollar amount of debt service approved for the allotment, based on the calculation of the limitation on assistance at the time of approval.

(f) Finality of award. Awards of assistance under TEC, Chapter 46, will be made based on the information available at the close of the application cycle. Changes in the terms of the issuance of debt, either in the length of the payment schedule or the applicable interest rate, that occur after the time of the award of assistance will not result in an increase in the debt service considered for award. Any reduction in debt service requirements resulting from changes in the terms of issuance of debt shall result in a reduction in the amount of the award of assistance.

(g) Data sources.

(1) For purposes of determining the limitation on assistance and prioritization, the projected average daily attendance as submitted to the legislature by the Texas Education Agency (TEA) in March of an odd-numbered year, as required by TEC, §42.254, shall be used.

(2) For purposes of prioritization, the final property values certified by the Comptroller of Public Accounts for the tax year preceding the year in which assistance is to begin shall be used. If final property values are unavailable, the most recent projection of property values shall be used.

(3) For purposes of both the calculation of the limitation on assistance and prioritization, the commissioner may consider, prior to the close of an application cycle, adjustments to data values determined to be erroneous.

(4) All final calculations of assistance earned shall be based on property values as certified by the Comptroller for the preceding school year, and the final average daily attendance for the current school year.

(h) Allocation of debt service between qualified and nonqualified projects. Debt service shall be allocated among qualified and nonqualified purposes and among eligible and ineligible categories of debt. The method used for allocation among qualified and nonqualified purposes shall be on the basis of pro rata value of the instructional facility versus the noninstructional purposes over the life of the debt service, unless a different basis is indicated in the bond order. The method of allocation of debt service between eligible and ineligible categories must be the same method selected for approval by the Attorney General.

(i) Payments and deposits.

(1) Payment of state assistance shall be made as soon as practicable after September 1 of each year. No payments shall be made until the sale of bonds is determined to be final or the contract for lease-purchase financing has been assigned.

(2) Funds received from the state for bonded debt must be deposited to the interest and sinking fund of the school district and must be considered in setting the tax rate necessary to service the debt.

(3) Funds received from the state for lease-purchase agreements must be deposited to the general fund of the district and used for lease-purchase payments.

(4) A final determination of state assistance for a school year will be made using final attendance data and property value information as may be affected by TEC, §42.257. Additional amounts owed to districts shall be paid along with assistance in the subsequent school year, and any reductions in payments shall be subtracted from payments in the subsequent school year.

(5) As an alternative method of adjustment of payments, the commissioner may increase or decrease allocations of state aid under TEC, Chapter 42, to reflect appropriate increases or decreases in assistance under TEC, Chapter 46.

(j) Approval of Attorney General required. All bond issues and all lease-purchase arrangements must receive approval from the Attorney General before a deposit of state funds will be made in the accounts of the school district.

(k) Deadlines.

(1) Two application cycles will be conducted each year. Applications shall be received by 5:00 p.m., on June 15 and December 15 of each year, or the last official business day that precedes these dates.

(2) An application received after the deadline shall be considered a valid application for the subsequent period unless withdrawn by the submitting district before the end of the subsequent period.

(3) An application may be submitted no earlier than 90 calendar days prior to the prospective sale date/pricing date of the bond issue or the date the school board adopts the order authorizing a lease-purchase agreement. If the sale or pricing of bonds or adoption of an order authorizing a lease-purchase agreement is delayed, an extension shall be granted for up to 90 additional days beyond the date identified in the application as the prospective sale date/pricing date of the bond issue or the date the school board adopts the order authorizing a lease purchase agreement. If completion of the sale or agreement has not taken place by the end of the extension period, the TEA shall consider the application withdrawn.

(4) The voters of the school district may not submit an application for bonded debt prior to the successful passage of an authorizing proposition. An application for a lease-purchase agreement may not be submitted prior to the end of the 60-day waiting period in which voters may petition for a referendum, or until the results of the referendum, if called, approve the agreement.

(l) Prioritization and notice of award. Upon close of the application cycle, all eligible applications shall be ranked in order of property wealth per student in average daily attendance. State assistance will be awarded beginning with the district with the lowest property wealth and continue until all available funds have been utilized. If a district has not previously received any assistance due to a lack of appropriated funds, its property wealth for prioritization shall be reduced by 10% for each biennium in which assistance was not provided. Each district shall be notified of the amount of assistance awarded and its position in the rank order for the application cycle.

(m) Bond taxes. A school district that receives state assistance must levy and collect sufficient interest and sinking fund taxes to meet its local share of the debt service requirement for which state assistance is granted. Failure to levy and collect sufficient taxes shall result in pro rata reduction of state assistance.

(n) Exclusion from taxes. The taxes collected for bonded debt service for which funding under TEC, Chapter 46, is granted shall be excluded from the tax collections used to determine the amount of state aid under TEC, Chapter 42.

(o) Calculation of bond tax rate (BTR) for lease-purchase arrangements. The value of BTR in the formula for state assistance for a lease-purchase arrangement shall be calculated based on the lease-purchase payment requirement, not to exceed the relevant limitations described in this section. The lease-purchase payment shall be divided by the guaranteed level (FYL), then by average daily attendance (ADA), then by 100. The value of BTR shall be subtracted from the value of district tax rate (DTR) as computed in TEC, §42.302, prior to limitation imposed by TEC, §42.303.

(p) Continued treatment of taxes and lease-purchase payments. Once approved for funding under TEC, Chapter 46, a district may not select whether taxes associated with the bonded debt are considered for purposes stated in TEC, Chapter 46, or Chapter 42. Until approved for assistance under TEC, Chapter 46, taxes collected for debt service may be considered in the calculation of state aid in TEC, Chapter 42. Bonded debt service or lease-purchase payments that were excluded from consideration for state assistance due

to prioritization or due to the limitation on assistance may be considered for state assistance in subsequent biennia through additional applications. A modified application may be provided for previously rejected debt service or lease-purchase payments.

(q) Variable rate bonds. Variable rate bonds are eligible for state assistance under the Instructional Facilities Allotment. For purposes of calculating the biennial limitation on access to the allotment, the payment requirement for a variable rate bond shall be valued at the interest rate specified in the official statement (or draft) as the rate to be used in calculating the minimum amount a district must budget for payment of interest cost and the scheduled minimum mandatory redemption amount, if applicable. For purposes of calculating state assistance, the lesser of the actual interest rate or that used for the calculation of the limitation on access to the allotment shall be used. A district may exercise its ability to make payments in amounts in excess of the minimum, but the excess amount shall not be used in determining the value of BTR or in the calculation of state assistance in that year.

(r) Reports required. The commissioner may require such information and reports as are necessary to assure compliance with applicable laws. The commissioner may require immediate notification by the district of relevant financing activities such as refunding or refinancing of bond issues, renegotiation of lease-purchase terms, change in use of bond proceeds, or other actions taken by the district that might affect state funding requirements.

(s) Temporary provision. This subsection provides for an initial application cycle with a deadline for applications of September 8, 1997. This subsection expires on January 1, 1998. The requirement to apply for assistance prior to issuance of debt is waived for the initial application cycle. To be eligible for the initial application, the debt service must meet the following criteria, notwithstanding other provisions of this section to the contrary:

(1) The election authorizing bonded debt must be held on or before September 30, 1997. For lease-purchase agreements, the end of the 60-day waiting period in which voters may petition for a referendum, or the referendum, if called, must occur on or before September 30, 1997.

(2) The sale or pricing of bonds or adoption of an order authorizing a lease-purchase agreement must take place on or before December 31, 1997.

(3) All requirements of subsection (d)(1)-(5) of this section must be met. A payment made prior to the 1997-1998 school year for debt service on eligible bonded debt sold in the 1996-1997 school year does not invalidate the eligibility of the debt service for state assistance so long as the payment was not made from taxes levied for that debt, the sale of the bonds occurred after the adoption of the district tax rates for tax year 1996, and the district had no opportunity to levy taxes for the initial payment in 1996-1997.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712612

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Effective date: October 13, 1997
Proposal publication date: August 12, 1997
For further information, please call: (512) 463-9701

Chapter 74. Curriculum Requirements

The Texas Education Agency (TEA) adopts amendments to §74.3 and §§74.11-74.13, concerning curriculum requirements, with changes to the proposed text as published in the August 1, 1997, issue of the *Texas Register* (22 TexReg 7118). The sections establish definitions, requirements, and procedures related to required curriculum and graduation requirements.

The adopted amendments would provide school districts the option of offering the technology applications courses in the recently adopted 19 TAC Chapter 126, Texas Essential Knowledge and Skills (TEKS) for Technology Applications, beginning in the 1997-1998 school year for state high school graduation credit. The adopted amendments will align the graduation requirements with the Texas essential knowledge and skills. All students entering Grade 9 during the 1997-1998 school year must have one technology applications graduation credit. In addition to the technology applications courses, courses from 19 TAC Chapter 120, TEKS for Business Education, and 19 TAC Chapter 123, TEKS for Technology Education/Industrial Technology Education, are also to receive state high school technology applications graduation credit. The adopted amendments would revise the technology applications graduation requirement under the minimum, recommended, and distinguished achievement graduation plans.

Under Senate Bill 1, a rule adopted by the State Board of Education (SBOE) normally does not take effect until the beginning of the school year that begins at least 90 days after the date the rule is adopted. However, the Bill provides that a board rule may take effect earlier under certain circumstances. The SBOE, by an affirmative vote of two-thirds of the board members, proposes an earlier effective date for the adopted amendments. The earlier date would allow schools to begin offering these courses in the 1997-1998 school year on a voluntary basis.

The following changes have been made since the section was proposed.

In §74.3(b)(2)(K)(iii)-(v), language has been amended to indicate that graduation credit for Computer Mathematics will be phased out on August 31, 1998, rather than August 31, 1999. In July 1997, the State Board of Education adopted the TEKS for mathematics with an implementation date of September 1, 1998. This change was also made in §§74.11(d)(10)(C)-(E), 74.12(b)(10)(C)-(E), and 74.13(a)(1)(J)(iii)-(v).

The following public comments have been received since the sections were proposed.

General Comments.

An individual and a representative of the Association of Texas Technology Education commented in support of several technology education courses listed from which students may select for state high school technology applications credit.

Agency Response. The agency agrees with these comments.

Subchapter A. Required Curriculum

19 TAC §74.3

The amendment is adopted under the Texas Education Code (TEC), §28.002, which directs the SBOE to adopt rules related to essential knowledge and skills and required curricula, and §28.025, which directs the SBOE to adopt rules that determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under TEC, §28.002.

§74.3. Description of a Required Secondary Curriculum.

(a) (No change.)

(b) Secondary Grades 9-12.

(1) (No change.)

(2) The school district must offer the courses listed in this paragraph and maintain evidence that students have the opportunity to take these courses:

(A)-(J) (No change.)

(K) technology applications - one unit of credit selected from a variety of computer-related courses including:

(i) all courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications);

(ii) the following courses in Chapter 120 of this title (relating to Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I and II, Business Computer Programming, Telecommunications and Networking, and Business Image Management and Multimedia;

(iii) the following courses in Chapter 123 of this title (relating to Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communication Graphics (modular computer laboratory-based), and Computer Multimedia and Animation Technology; and

(iv) Business Computer Applications I and II, Business Computer Programming I and II, Computer Applications, Computer Science I and II, Microcomputer Applications, Business Information Processing, Industrial Technology Computer Applications, and Computer Mathematics as provided in Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12) until August 31, 1998.

(L) (No change.)

(3) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712613

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

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For further information, please call: (512) 463-9701

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Subchapter B. Graduation Requirements

19 TAC §§74.11–74.13

The amendments are adopted under the Texas Education Code (TEC), §28.002, which directs the SBOE to adopt rules related to essential knowledge and skills and required curricula, and §28.025, which directs the SBOE to adopt rules that determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under TEC, §28.002.

§74.11. *High School Graduation Requirements.*

(a)-(c) (No change.)

(d) A student must complete at least 22 credits to receive a minimum high school program diploma. Credit may be awarded without prior instruction under Texas Education Code, §28.023 (relating to Credit by Examination), or §39.023(i) (relating to end-of-course tests). A student must demonstrate proficiency in the following.

(1)-(9) (No change.)

(10) Technology applications - one credit, which may be satisfied by:

(A) all courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications);

(B) the following courses in Chapter 120 of this title (relating to Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia;

(C) the following courses in Chapter 123 of this title (relating to Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communication Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology; or

(D) Business Computer Applications I or II, Business Computer Programming I or II, Computer Applications, Computer Science I or II, Microcomputer Applications, Business Information Processing, Industrial Technology Computer Applications, or Computer Mathematics as provided in Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12) until August 31, 1998.

(11) (No change.)

(e)-(h) (No change.)

§74.12. *Recommended High School Program.*

(a) (No change.)

(b) Academic core components. College Board advanced placement and International Baccalaureate courses may be substituted for requirements in appropriate proficiency areas. Credit may be awarded without prior instruction under Texas Education Code, §28.023 (relating to Credit by Examination), or §39.023(i) (relating to end-of-course tests). The student must demonstrate proficiency in the following.

(1)-(9) (No change.)

(10) Technology applications - one credit, which may be satisfied by:

(A) all courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications);

(B) the following courses in Chapter 120 of this title (relating to Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia;

(C) the following courses in Chapter 123 of this title (relating to Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communication Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology; or

(D) Computer Science I or II, Business Computer Applications I or II, Business Computer Programming I or II, Computer Applications, Microcomputer Applications, Business Information Processing, Industrial Technology Computer Applications, or Computer Mathematics as provided in Chapter 75, Subchapter D, of this title (relating to Essential Elements - Grades 9-12) until August 31, 1998.

(11) (No change.)

(c)-(d) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712614

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

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For further information, please call: (512) 463-9701

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 363. Financial Assistance Programs

The Texas Water Development Board (board) adopts new §363.18 and amendments to §§363.2, 363.42, and 363.43, concerning Financial Assistance Programs without changes to the proposed text as published in the August 1, 1997 issue of the *Texas Register* (22 TexReg 7126) and will not be republished.

New §363.18 provides an option for water supply corporations to execute a promissory note and loan agreement instead of issuing bonds to secure financial assistance through the Water Supply Account. Amendment to §363.2 adds a definition for corporation. Amendments to §363.42 and §363.43 add provi-

sions for execution of a promissory note and loan agreement to fulfill requirements for loan closing and/or release of funds.

Subchapter A. General Provisions

31 TAC §363.2

No written comments were received on the proposed amendments and new section.

The amendment is adopted under the authority of the Texas Water Code, §6.101 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712529

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Effective date: October 13, 1997

Proposal publication date: August 5, 1997

For further information, please call: (512) 463-7981



General Application Procedures

31 TAC §363.18

The new section is adopted under the authority of the Texas Water Code, §6.101 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9712531

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

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For further information, please call: (512) 463-7981



Formal Action by the Board

31 TAC §363.33

The Texas Water Development Board (the board) adopts an amendment to §363.33, concerning Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects without changes to the proposed text as published in the August 5, 1997, issue of the *Texas Register* (22 TexReg 7204) and will not be republished. The amendment will insure that the interest

rates set for loans will not be higher than allowed under federal tax law applicable to the proceeds to be used by the Board in providing the loan.

No comments were received on the proposed amendment.

The amendment is adopted under the authority of the Texas Water Code, §6.101 and §17.176 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State and the authority to establish lending rates in the use of the proceeds of bonds sold by the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712527

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

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Proposal publication date: August 5, 1997

For further information, please call: (512) 463-7981



Prerequisites to Release of State Funds

31 TAC §§363.42-363.43

The amendments are adopted under the authority of the Texas Water Code, §6.101 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712530

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

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Proposal publication date: August 1, 1997

For further information, please call: (512) 463-7981



Chapter 371. Drinking Water State Revolving Fund

The Texas Water Development Board (board) adopts new §371.40 and amendments to §§371.2, 371.71, and 371.72, concerning the Drinking Water State Revolving Fund without changes to the proposed text as published in the August 1, 1997 issue of the *Texas Register* (22 TexReg 7127) and will not be republished.

New §371.40 provides an option for water supply corporations to execute a promissory note and loan agreement instead

of issuing bonds to secure financial assistance through the Drinking Water State Revolving Fund. Amendment to §371.2 adds a definition for corporation. Amendments to §§371.71 and 371.72 add provisions for execution of a promissory note and loan agreement to fulfill requirements for loan closing and/or the release of funds.

No written comments were received on the proposed amendments and new section.

Introductory Provisions

31 TAC §371.2

The amendment is adopted under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including the SRF Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712532

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Effective date: October 13, 1997

Proposal publication date: August 1, 1997

For further information, please call: (512) 463-7981



Program Requirements

31 TAC §§371.13, 371.14, 371.16, 371.17, 371.19, 371.20, 371.23

The Texas Water Development Board (board) adopts amendments to §§371.13, 371.14, 371.16, 371.17, 371.19 and 371.20 and new §371.23 concerning the Drinking Water State Revolving Fund without changes to the proposed text as published in the August 5, 1997, issue of the *Texas Register* (22 TexReg 7205) and will not be republished.

The amendments provide for a new Drinking Water State Revolving Fund program for source water protection. The amendments also provide correction to Chapter 371 pursuant to changes in federal guidance requirements. Amendment to §371.13 concerning projects eligible for assistance corrects projects that consolidate water supplies. Amendments to §371.14 add clarification regarding authorized source water protection activities that may be funded. Amendment to §371.16 concerning eligible land costs adds acquisition of land or conservation easements as an eligible cost for the source water protection program. Three definitions are added in §371.19 concerning the rating process that are applicable to source water protection. Additionally, new §371.19(h) is added to provide criteria for source water protection priority ratings. Section 371.20 concerning the intended use plan is amended to add new §371.20(b)(1)(F) concerning requirements for listing projects in the intended use plan. New §371.23 provides cri-

teria and methods for the distribution of funds for source water protection.

No written comments were received on the proposed amendments and new section.

The amendments and new section are adopted under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including the SRF Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712528

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Effective date: October 13, 1997

Proposal publication date: August 5, 1997

For further information, please call: (512) 463-7981



Application for Assistance

31 TAC §371.40

The new section is adopted under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including the SRF Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712533

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Effective date: October 13, 1997

Proposal publication date: August 1, 1997

For further information, please call: (512) 463-7981



Prerequisites to Release of Funds

31 TAC §§371.71-371.72

The amendments are adopted under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including the SRF Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712534

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Effective date: October 13, 1997

Proposal publication date: August 1, 1997

For further information, please call: (512) 463-7981



TITLE 34. PUBLIC FINANCE

Part IX. Texas Bond Review Board

Chapter 190. Allocation of State's Limit on Certain Private Activity Bonds

Subchapter A. Program Rules

34 TAC §§190.1-190.8

The Texas Bond Review Board adopts amendments to §§190.1 - 190.8, concerning application dates and allocation of private activity bonds, without changes to the proposed text as published in the July 29, 1997, issue of the *Texas Register* (22 TexReg 7025).

The program rules are amended to comply with changes in Texas Civil Statutes, Article 5190.9a, as amended.

Generally, the amendments will allow more applications to receive a reservation and more applications to successfully close their bond transactions.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 5190.9a, as amended, which give the Texas Bond Review Board the authority to adopt rules governing the implementation and administration of the allocation of the state's ceiling on private activity bonds.

Texas Civil Statutes, Article 5190.9a is affected by these adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 18, 1997.

TRD-9712449

Albert L. Barcarisse

Executive Director

Texas Bond Review Board

Effective date: October 8, 1997

Proposal publication date: July 29, 1997

For further information, please call: (512) 463-1741



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VI. Texas Department of Criminal Justice

Chapter 151. General Provisions

37 TAC §151.25

The Texas Department of Criminal Justice adopts new §151.25, concerning the prohibition of the use or possession of tobacco products on TDCJ property, with certain exceptions without changes to the proposed text as published in the July 29, 1997, issue of the *Texas Register* (22 TexReg 7029).

This policy is applicable to all employees of, persons in the custody of, visitors to the Texas Department of Criminal Justice (TDCJ) and privately operated secure correctional facilities under contract with TDCJ. TDCJ is committed to providing a safe and healthy environment and working conditions for employees and offenders. TDCJ recognizes an employee's choice to use tobacco products, while balancing the security need to control contraband. All offenders and persons visiting offenders are prohibited from possessing or using any tobacco products. TDCJ employees and persons on TDCJ property conducting official State business are authorized to possess and use tobacco products in accordance with the procedures outlined in this new section and in TDCJ's Personnel Directive PD-91 "Work Cycles and Compensable Hours of Work."

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Government Code, §492.013, which gives the Board general rulemaking authority; Texas Government Code, §493.006(b) and §494.010; and Texas Health and Safety Code, §341.016(a).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712568

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Effective date: October 13, 1997

Proposal publication date: July 29, 1997

For further information, please call: (512) 463-9693



Chapter 161. Community Justice Assistance Division Administration

37 TAC §161.21

The Texas Department of Criminal Justice - Community Justice Assistance Division (TDCJ-CJAD) adopts an amendment to §161.21, concerning Role of the Judicial Advisory Council without changes to the proposed text as published in the August 1, 1997, issue of the *Texas Register* (22 TexReg 7129).

The TDCJ-CJAD is adopting either enactment of new standards or enhancements to existing standards. Among new standards

are provisions for a standardized educational screening instrument, deletion of certain Community Supervision Officer (CSO) eligibility requirements, training requirements for Community Supervision and Corrections Department supervisory and management staff, limits on attempts to pass the CSO certification examination, training requirements for residential facility personnel, and deletion of requirements for annual HIV/AIDS training. Enhancements include changes in time allotted for completion of case classification, SCS assessments, and supervision plans.

The amendment represents an effort to improve Community Supervision and Corrections Departments resulting in increased public safety.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code: §493.003(b), which establishes the Judicial Advisory Council; and §509.003, which gives the Board of Criminal Justice authority to adopt reasonable rules establishing minimum standards for the operations and programs of community supervision and corrections departments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712571

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Effective date: October 13, 1997

Proposal publication date: August 1, 1997

For further information, please call: (512) 463-9693



Chapter 163. Community Justice Assistance Division Standards

The Texas Department of Criminal Justice - Community Justice Assistance Division (TDCJ-CJAD) adopts the repeal of §163.34 concerning Prohibition on Carrying Handguns; and amendments to §§163.3 concerning Objectives; 163.21 concerning Administration; 163.25 concerning Community Justice Councils, Task Forces, and Plans; 163.31 concerning Sanctions, Programs, and Services; 163.33 concerning Community Supervision Officers; 163.35 concerning Supervision; 163.37 concerning Reports and Records; 163.41 concerning Medical and Psychological Information; 163.43 concerning Funding and Financial Management; 163.46 concerning Allocation Formula For Community Corrections Program; and 163.47 concerning Contested Matters without changes to the proposed text as published in the August 1, 1997, issue of the *Texas Register* (22 TexReg 7130).

The TDCJ-CJAD is adopting either the enactment of new standards or enhancements to existing standards. Among new standards are provisions for a standardized educational screening instrument, deletion of certain Community Supervision Officer (CSO) eligibility requirements, training requirements for

Community Supervision and Corrections Department supervisory and management staff, limits on attempts to pass the CSO certification examination, training requirements for residential facility personnel, and deletion of requirements for annual HIV/AIDS training. Enhancements include changes in time allotted for completion of case classification, SCS assessments, and supervision plans.

One comment was received by the Director of Cameron-Willacy County Community Supervision and Corrections Department regarding §163.33 Community Supervision Officers. The director was opposed to this standard which would "continue to specify certain degree requirements (such as criminal justice, sociology, etc.) and would also require the CSCD Director to justify in writing any deviation from those specific degree requirements." The previous standard required the TDCJ-CJAD Director to approve any deviation from this standard. The new standard, as proposed, provides the CSCD Director with approval authority for any deviations from this standard instead of the TDCJ-CJAD Director which provides (the CSCD Director) flexibility in hiring practices. After consideration of the comment, and the exhaustive process of consulting with CSCD and judicial personnel regarding the proposed changes, the new standard is adopted without change from the proposal.

The adoption is an effort to improve Community Supervision and Corrections Departments resulting in increased public safety.

37 TAC §163.34

The repeal is adopted under Texas Government Code: §509.003, which gives the Board of Criminal Justice authority to adopt reasonable rules establishing minimum standards for the operations and programs of community supervision and corrections departments; §509.007, which governs the requirements for community justice plans; §509.008, which governs community supervision officer certification standards; §509.009, which allows TDCJ-CJAD to provide training to community supervision officers; §509.011, which provides for state aid to CSCDs; §509.012, which provides for the refusal or suspension of state aid for non-compliance with TDCJ-CJAD standards; §76.009 and §76.010, which govern the use of state aid to provide facilities, utilities, and equipment for CSCDs; and §492.013, which grants the Board general rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712569

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Effective date: October 13, 1997

Proposal publication date: August 1, 1997

For further information, please call: (512) 463-9693



37 TAC §§163.3, 163.21, 163.25, 163.31, 163.33, 163.35, 163.37, 163.41, 163.43, 163.46, 163.47

The amendments are adopted under Texas Government Code: §509.003, which gives the Board of Criminal Justice authority to adopt reasonable rules establishing minimum standards for the operations and programs of community supervision and corrections departments; §509.007, which governs the requirements for community justice plans; §509.008, which governs community supervision officer certification standards; §509.009, which allows TDCJ-CJAD to provide training to community supervision officers; §509.011, which provides for state aid to CSCDs; §509.012, which provides for the refusal or suspension of state aid for non-compliance with TDCJ-CJAD standards; §76.009 and §76.010, which govern the use of state aid to provide facilities, utilities, and equipment for CSCDs; and §492.013, which grants the Board general rulemaking authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712570

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Effective date: October 13, 1997

Proposal publication date: August 1, 1997

For further information, please call: (512) 463-9693



Part VII. Texas Commission on Law Enforcement Officer Standards and Education

Chapter 211. Administration Division

37 TAC §211.21

The Texas Commission on Law Enforcement Officer Standards and Education adopts amendments to §211.21, concerning fees and payments, without changes to the proposal as published in the July 4, 1997, issue of the *Texas Register* (22 TexReg 6255).

Section 211.21 was amended in response to a provision in House Bill 1, the General Appropriations Act for the 1998-99 biennium, which granted the Commission approximately \$1.5 million over the biennium for new programs contingent upon the Commission instituting a fee program which provides for the collection of a \$100 fee for establishing a person's eligibility to reinstate a license that has lapsed. Staff reasoned, and the Commissioners concurred, that because the processes for reinstating a suspended license and for issuing an endorsement of eligibility based on out-of-state training or education were at least, if not more, labor-intensive as the process of reactivating a license, and because they are similar requests, that the \$100 fee should also apply to those applications.

No comments were received regarding the amendment of this section.

The Commission is authorized to adopt rule amendments by Texas Government Code §415.010 (Vernon 1996).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712428

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: November 1, 1997

Proposal publication date: July 4, 1997

For further information, please call: (512) 450-0188



37 TAC §211.30

The Texas Commission on Law Enforcement Officer Standards and Education adopts amendments to §211.30, concerning specific authority to waive rules, without changes to the proposed text as published in the July 4, 1997, issue of the *Texas Register* (22 TexReg 6255).

A new provision was added in subsection (a) allowing the Executive Director to waive the rules of the Commission "for other reasons as may be authorized by law." Staff reasoned, and the Commissioners concurred, that the original intent of this section was to allow the Executive Director flexibility to achieve the goals of the Commission under specific circumstances. There are a number of statutory provisions which allow the Commission to waive certain requirements if good cause or a hardship exist; however, there was no specific provision in the Commission's rules that explicitly allowed the Executive Director to waive the rules of the commission in these cases.

No comments were received regarding the amendment of this section.

The Commission is authorized to adopt rule changes by Texas Government Code §415.010 (Vernon 1996).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712432

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: November 1, 1997

Proposal publication date: July 4, 1997

For further information, please call: (512) 450-0188



37 TAC §§211.85, 211.103, 211.106

The Texas Commission on Law Enforcement Officer Standards and Education adopts the repeal of §§211.85, 211.103, and 211.106 regarding proficiency certificates, without changes to the proposed text as published in the July 4, 1997, issue of the *Texas Register* (22 TexReg 6256).

Sections 211.85, 211.103, and 211.106 will be repealed and replaced by §§221.15, 221.17, 221.19, 221.21, 221.23, 221.25, 221.27, and 221.29, which were developed pursuant to an ongoing reorganization of the Commission's rules. The reorganization plan was developed by staff and considered by the Commission's Ad Hoc Rules Committee in response to concerns that the Commission's Administrative Code had become outdated, too complex and difficult to understand.

Included in this ongoing reorganization is a schedule developed by staff for renumbering certain sections of the rules as a way to more clearly label specific topics and to more fully utilize the chapter numbers available in the Administrative Code for the Commission's rules.

No comments were received regarding the repeal of these sections.

The Commission is authorized to adopt rule changes by Texas Government Code §415.010 (Vernon 1996).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712431

Edward T. Laine

Chief, Professional Standards and Administrative Operations
Texas Commission on Law Enforcement Officer Standards and Education

Effective date: November 1, 1997

Proposal publication date: July 4, 1997

For further information, please call: (512) 450-0188

◆ ◆ ◆
37 TAC §211.88

The Texas Commission on Law Enforcement Officer Standards and Education adopts the repeal of §211.88, concerning reporting responsibilities of individuals, without changes to the proposal as published in the July 4, 1997, issue of the *Texas Register* (22 TexReg 6256).

Section 211.88 will be repealed and replaced by §217.88, which was developed pursuant to an ongoing reorganization of the Commission's rules. The reorganization plan was developed by staff and considered by the Commission's Ad Hoc Rules Committee in response to concerns that the Commission's Administrative Code had become outdated, too complex and difficult to understand. Included in this ongoing reorganization is a schedule developed by staff for renumbering certain sections of the rules as a way to more clearly label specific topics and to more fully utilize the chapter numbers available in the Administrative Code for the Commission's rules.

No comments were received regarding the repeal of this section.

The Commission is authorized to adopt rule changes by Texas Government Code §415.010 (Vernon 1996).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712429

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: November 1, 1997

Proposal publication date: July 4, 1997

For further information, please call: (512) 450-0188

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Chapter 217. Licensing Requirements Division

37 TAC §217.88

The Texas Commission on Law Enforcement Officer Standards and Education adopts new §217.88, concerning reporting responsibilities of individuals, without changes to the proposed text as published in the July 4, 1997, issue of the *Texas Register* (22 TexReg 6257).

This section was developed pursuant to an ongoing reorganization of the Commission's rules. The reorganization plan was developed by staff and considered by the Commission's Ad Hoc Rules Committee in response to concerns that the Commission's Administrative Code had become outdated, too complex and difficult to understand. Included in this ongoing reorganization is a schedule for renumbering certain sections of the rules as a way to more clearly label specific topics and to more fully utilize the chapter numbers available in the Administrative Code for the Commission's rules. This new section will replace current §211.88, concerning reporting responsibilities of individuals. No substantive changes were made to the provisions of the current section. References to obsolete standards were deleted.

No comments were received regarding the adoption of this new section.

The Commission is authorized to adopt new rules by Texas Government Code §415.010 (Vernon 1996).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712430

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: November 1, 1997

Proposal publication date: July 4, 1997

For further information, please call: (512) 450-0188

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 148. Facility Licensure

Subchapter D. Programs Services

Treatment Levels

40 TAC §§148.211–148.214

Due to technical error, a portion of the following adopted rule submitted by the Texas Commission on Alcohol and Drug Abuse was inadvertently omitted from the September 26, 1997 issue of the Texas Register. The rule will become effective on October 7, 1997.

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.211-148.214, concerning treatment levels. Sections 148.212-148.214 are adopted with changes to the proposed text as published in the July 8, 1997, issue of the *Texas Register* (22 TexReg 6415). Section 148.211 is adopted without changes and will not be republished.

The amendments are adopted to require Level II, III, and IV programs to provide counseling, to limit counselor caseloads to 20 clients in residential Level IV programs, and to clarify existing requirements.

Language has been restored to §§148.212, 148.213, and 148.214 describing the type of client appropriate for each level of treatment. The counseling hours required in §148.212 and 148.214 have been lowered from the proposed version. Section 148.214 expands allowed services to include life skills training as is allowed in the other levels of service.

These rules describe service requirements that apply to four specific levels of service.

The commission received comments from the Association of Substance Abuse Service Providers of Texas, Burke Center, and Christian Farms Treehouse, which are summarized below.

Comment: Do not omit language that describes the type of client appropriate for each level of treatment.

Response: The commission accepts this suggestion.

Comment: The proposed rules specifies minimum hours of counseling for each level. There appears to be a hybrid activity that is not purely counseling or education in the traditional sense. This activity combines elements of counseling and education and plays a significant role in various treatment modalities. In the context of an overall program, we believe this activity needs to be recognized.

Response: The commission believes most of these hybrid activities would be classified as "life skills training". Recognizing that such activities can be as important as traditional counseling, the rules have been revised to require three hours of counseling and fourteen hours of additional counseling, education, or life skills training for Level II, and two hours of counseling and eight hours of additional counseling, education, or life skills training for Level III. It is believed this will give providers greater flexibility in implementing their programs.

Comment: As written, this standard does not allow for sufficient flexibility to provide for decreasing transitional services and PRN

drop in counseling. The concept of "averaging" is fine in theory, however, in real life it sets up a tendency to "front load" services that may or may not really be necessary. The recommendation was to not require minimum hours of service; instead allow for the program to implement services sufficient to meet the clients individual needs as identified in the treatment plan.

Response: The commission believes that eliminating all requirements for minimum hours does not ensure clients will receive adequate treatment. While many providers would provide excellent care without any rules whatsoever, we are charged with the responsibility to protect clients from those who are unable to deliver appropriate treatment without some structure. The concept of averaging hours over the course of a client's stay allows a smoother transition from one level of service to another and also accommodates other fluctuations in the intensity of services needed by an individual client during treatment. The number of hours required at each level was recommended by a diverse group of providers, and the recommendations were built around the concept of averaging. It is expected that most clients at a given level of treatment will need more than the listed number of hours during some phases and less than the listed number during others.

Comment: It is agreed that the requirement of one hour per week of individual counseling constitutes sound practice of this level of care; however, there is concern that meeting this requirement will force hiring of additional staff and add to the expense of providing services to a program which is already woefully underfunded.

Response: The commission does not think a provider can meet the requirements for individualized treatment without at least one hour of individual counseling per week. The program is required to develop an individualized treatment plan, review the client's progress and make revisions to the plan, develop an individualized discharge plan, and help clients resolve individual issues during the course of treatment. These activities cannot take place without regular one-to-one contact.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.212. Level II Treatment.

(a) All clients admitted to Level II shall be:

- (1) medically stable; and
- (2) able to participate in treatment.

(b) The program shall have enough staff to provide close supervision and individualized treatment.

(c) Counselor caseloads shall not exceed ten clients for each counselor.

(d) Direct care staff shall be awake and on site during all hours of program operation. The direct care staff-to-client ratio shall be at least 1:16 during:

and (1) the hours clients are awake in residential programs;

(2) all hours of operation in outpatient programs.

(e) Counselors shall complete a comprehensive client assessment within three individual service days of admission for all clients transferred from Level I or admitted directly to a Level II program.

(f) An individualized treatment plan shall be completed for all clients within five individual service days of admission.

(g) The facility shall deliver an average of 20 hours of structured activities per week for each client, including:

(1) three hours of chemical dependency counseling (including at least one hour of individual counseling);

(2) 14 hours of additional counseling, chemical dependency education, or life skills training; and

(3) three hours of structured social and/or recreational activities.

(h) Each residential client shall have an opportunity to participate in physical recreation at least weekly.

(i) Program staff shall offer related services to identified significant others.

§148.213. Level III Treatment.

(a) All clients admitted to Level III shall be:

(1) medically stable, and

(2) able to function with limited supervision and support.

(b) The program shall have enough staff to meet treatment needs within the context of the program description.

(c) Counselor caseloads shall not exceed 16 clients per counselor.

(d) Direct care staff shall be awake and on site during all hours of program operation. The direct care staff-to-client ratio shall be at least 1:16 during:

and (1) the hours clients are awake in residential programs;

(2) all hours of operation in outpatient programs.

(e) For clients transferred from Level I or admitted directly to this level of treatment, counselors shall complete a comprehensive client assessment within five individual service days of admission.

(f) All clients shall have an individualized treatment plan within seven individual service days of admission.

(g) The facility shall deliver an average of ten hours of structured activities per week for each client, including at least two hours of chemical dependency counseling (with at least one hour of individual counseling every two weeks) and eight hours of additional counseling, chemical dependency education, or life skills training.

§148.214. Level IV Treatment.

(a) All clients admitted to Level IV programs shall be:

(1) medically stable; and

(2) able to function with minimal structure and support.

(b) A Level IV program shall not admit a client transferred directly from Level I without written justification in the client record.

(c) The program shall have enough staff to provide clients with adequate support and guidance.

(d) Counselor caseloads shall not exceed 20 clients per counselor in residential programs. Outpatient programs shall set limits on counselor caseload size that ensure effective, individualized treatment and rehabilitation. Criteria used to set the caseload size shall be documented.

(e) The program shall be adequately staffed during hours of operation to ensure effective service delivery.

(f) In residential programs, the awake direct care staff-to-client ratio shall be at least 1:16 during the hours clients are awake. At least one staff person shall be on site and accessible to clients during sleeping hours.

(g) For clients transferred from Level I or admitted directly to this level of treatment, counselors shall complete a comprehensive client assessment within:

(1) five individual service days of admission in residential programs; and

(2) 45 calendar days of admission in outpatient programs.

(h) All clients shall have an individualized treatment plan within:

(1) seven individual service days of admission in residential programs; and

(2) 45 calendar days of admission in outpatient programs.

(i) The facility shall deliver an average of two hours of structured activities per week for each client, including at least one hour of chemical dependency counseling and one hour of additional counseling, life skills training, or chemical dependency education.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712356

Mark S. Smock

Deputy for Finance and Administration

Texas Commission on Alcohol and Drug Abuse

Effective date: October 7, 1997

Proposal publication date: July 8, 1997

For further information, please call: (512) 349-6609

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

PROPOSED ACTION

The Commissioner of Insurance at a public hearing under Docket No. 2307 scheduled for 10:00 a.m. on November 3, 1997, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas, will consider a staff proposal to repeal Refusal to Renew Mandatory Endorsement HO-100, Refusal to Renew Mandatory Endorsement TDP-026, Refusal to Renew Mandatory Endorsement TDP-027, Refusal to Renew Mandatory Endorsement TFR-086, Refusal to Renew Mandatory Endorsement TFR-087 and Refusal to Renew Mandatory Endorsement FRO-486 as adopted by the previous State Board of Insurance in Board Order No. 60152.

The mandatory endorsements amending the Refusal to Renew provisions in the Texas Homeowners Policy, Texas Dwelling Policy, Texas Farm and Ranch Policy and Texas Farm and Ranch Owners Policy incorporated a prohibition of the refusal to renew a residential property policy because of the condition of the premises unless there was a change in the condition(s) of the premises, the insurer notified the insured of the condition(s) and the insurer provided the insured adequate time to correct the condition.

The endorsements adopted by the State Board of Insurance amended the Refusal to Renew provisions in the above referenced policies to read as follows:

We may not refuse to renew this policy based on the condition of the premises unless:

- (1) there is a change in the condition(s) of the premises,
- (2) we have notified you of the condition(s) which may result in our refusal to renew the policy, and
- (3) we have allowed you adequate time to remedy the condition(s).

On February 26, 1993 a temporary injunction was issued by a Travis County District Court prohibiting the department from implementing or enforcing the endorsements as amended. The district court decision was upheld by the Third Austin Court of Appeals.

A copy of the full text of the staff's proposal to repeal, filed September 22, 1997, is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the proposal, please contact Angie Arizpe at (512) 463-6326 (refer to Ref. No. P-0997-29-I).

Comments on the proposed repeal must be submitted in writing within 30 days after publication of the proposal in the Texas Register to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Lines, Texas Department of Insurance, P.O. Box 109104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712698

Carloine Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: September 24, 1997



Texas Department of Insurance

ADOPTED ACTION

The Commissioner of Insurance, at a public hearing under Docket No. 2300 held at 9:00 a.m., September 16, 1997 in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by staff to the Texas Automobile Rules and Rating Manual (the Manual) in a petition captioned "Second Petition...." The amendments consist of new and/

or adjusted 1995-98 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0797-21-I) was published in the August 8, 1997 issue of the *Texas Register* (22 TexReg 7385).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the 1995-98 model years of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in a 98-page exhibit on file with the Chief Clerk under Ref. No. A-0797-21-I, which is incorporated by reference into Commissioner's Order No. 97-0950.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

This agency hereby certifies that the amendments as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712703

Carloine Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: December 2, 1997

Proposal publication date: August 8, 1997

For further information, please call: (512) 463-6327

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as “Figure 1” followed by the TAC citation, “Figure 2” followed by the TAC citation.

**Number of Election Workers
Per Joint Voting Precinct**

(Includes two co-judges and two alternate judges who serves as a clerk)

Estimated Turnout per Joint Polling Location	Paper Ballot	Punch Card, Optical Tabulators and Voting Machine
200 or fewer	4	4
201 - 400	6	5
401 - 700	7	6
701 - 1100	9	7
1101 or more	13	9

The formula for estimating turnout for the 1998 joint primary elections is:

$$(A \times B) + C + D = E$$

- Where:
- A = the percentage of voter turnout for Governor or another statewide race in the 1994 party primary (percentage is the sum of all votes cast for all candidates for Governor or other statewide office in the 1994 primary divided by the number of registered voters).
 - B = the number of registered voters as of December, 1996 .
 - C = 25% of the number resulting when you multiply A x B.
 - D = Combined turnout for both parties
 - E= Preliminary Estimated 1998 Turnout for Joint Primary Election

Figure 1: 25 TAC §289.201(b)(101)(B)

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

[Figure 1: 25 TAC, §289.201(b)(98)(B)]

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1]$$

Figure 4: 25 TAC §289.201(o)(4)

**MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT
DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS**

	Neutron Energy (MeV)	Quality Factor** (Q)	Fluence per Unit Dose Equivalent* (neutrons cm ⁻² rem ⁻¹)	Fluence per Unit Dose Equivalent* (neutrons cm ⁻² Sv ⁻¹)
(thermal)	2.5 x 10 ⁻⁸	2	980 x 10 ⁶	980 x 10 ⁸
	1.0 x 10 ⁻⁷	2	980 x 10 ⁶	980 x 10 ⁸
	1.0 x 10 ⁻⁶	2	810 x 10 ⁶	810 x 10 ⁸
	1.0 x 10 ⁻⁵	2	810 x 10 ⁶	810 x 10 ⁸
	1.0 x 10 ⁻⁴	2	840 x 10 ⁶	840 x 10 ⁸
	1.0 x 10 ⁻³	2	980 x 10 ⁶	980 x 10 ⁸
	1.0 x 10 ⁻²	2.5	1,010 x 10 ⁶	1,010 x 10 ⁸
	1.0 x 10 ⁻¹	7.5	170 x 10 ⁶	170 x 10 ⁸
	5.0 x 10 ⁻¹	11	39 x 10 ⁶	39 x 10 ⁸
	1.0	11	27 x 10 ⁶	27 x 10 ⁸
	2.5	9	29 x 10 ⁶	29 x 10 ⁸
	5.0	8	23 x 10 ⁶	23 x 10 ⁸
	7.0	7	24 x 10 ⁶	24 x 10 ⁸
	10	6.5	24 x 10 ⁶	24 x 10 ⁸
	14	7.5	17 x 10 ⁶	17 x 10 ⁸
	20	8	16 x 10 ⁶	16 x 10 ⁸
	40	7	14 x 10 ⁶	14 x 10 ⁸
	60	5.5	16 x 10 ⁶	16 x 10 ⁸
	1.0 x 10 ²	4	20 x 10 ⁶	20 x 10 ⁸
	2.0 x 10 ²	3.5	19 x 10 ⁶	19 x 10 ⁸
	3.0 x 10 ²	3.5	16 x 10 ⁶	16 x 10 ⁸
	4.0 x 10 ²	3.5	14 x 10 ⁶	14 x 10 ⁸

* Monoenergetic neutrons incident normally on a 30-centimeter diameter cylinder tissue-equivalent phantom.

** Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-centimeter diameter cylinder tissue-equivalent phantom.

Element*	Radionuclide**	Group
Actinium (89)	Ac-227	I
	Ac-228	I
Americium (95)	Am-241	I
	Am-243	I
Antimony (51)	Sb-122	IV
	Sb-124	III
	Sb-125	III
Argon (18)	Ar-37	VI
	Ar-41	II
	Ar-41 (uncompressed)***	V
Arsenic (33)	As-73	IV
	As-74	I
	As-76	IV
	As-77	IV
Astatine (85)	At-211	III
Barium (56)	Ba-131	IV
	Ba-133	II
	Ba-140	III
Berkelium (97)	Bk-249	I
Beryllium (4)	Be-7	IV
Bismuth (83)	Bi-206	IV
	Bi-207	III
	Bi-210	II
	Bi-212	III
Bromine (35)	Br-82	IV
Cadmium (48)	Cd-109	IV
	Cd-115m	III
	Cd-115	IV
Calcium (20)	Ca-45	IV
	Ca-47	IV
Californium (98)	Cf-249	I
	Cf-250	I
	Cf-252	I
Carbon (6)	C-14	IV
Cerium (58)	Ce-141	IV
	Ce-143	IV
	Ce-144	III
Cesium (55)	Cs-131	IV
	Cs-134	II

	Cs-134	III
	Cs-135	IV
	Cs-136	IV
	Cs-137	III
Chlorine (17)	Cl-36	III
	Cl-38	IV
Chromium (24)	Cr-51	IV
Cobalt (27)	Co-56	III
	Co-57	IV
	Co-58m	IV
	Co-58	IV
	Co-60	III
Copper (29)	Cu-64	IV
Curium (96)	Cm-242	I
	Cm-243	I
	Cm-244	I
	Cm-245	I
	Cm-246	I
Dysprosium (66)	Dy-154	III
	Dy-165	IV
	Dy-166	IV
Erbium (68)	Er-169	IV
	Er-171	IV
Europium (63)	Eu-150	III
	Eu-152m	IV
	Eu-152	III
	Eu-154	II
	Eu-155	IV
Fluorine (9)	F-18	IV
Gadolinium (64)	Gd-153	IV
	Gd-159	IV
Gallium (31)	Ga-67	III
	Ga-72	IV
Germanium (32)	Ge-71	IV
Gold (79)	Au-193	III
	Au-194	III
	Au-195	III
	Au-196	IV
	Au-198	IV
	Au-199	IV
Hafnium (72)	Hf-181	IV
Holmium (67)	Ho-166	IV
Hydrogen (1)	H-3 (see tritium)	

Indium (49)	In-113m	IV
	In-114m	III
	In-115m	IV
	In-115	IV
Iodine (53)	I-124	III
	I-125	III
	I-126	III
	I-129	III
	I-131	III
	I-132	IV
	I-133	III
	I-134	IV
	I-135	IV
Iridium (77)	Ir-190	IV
	Ir-192	III
	Ir-194	IV
Iron (26)	Fe-55	IV
	Fe-59	IV
Krypton (36)	Kr-85m	III
	Kr-85m (uncompressed)***	V
	Kr-85	III
	Kr-85 (uncompressed)***	VI
	Kr-87	II
	Kr-87 (uncompressed)***	V
Lanthanum (57)	La-140	IV
Lead (82)	Pb-203	IV
	Pb-210	II
	Pb-212	II
Lutetium (71)	Lu-172	III
	Lu-177	IV
Magnesium (12)	Mg-28	III
Manganese (25)	Mn-52	IV
	Mn-54	IV
	Mn-56	IV
Mercury (80)	Hg-197m	IV
	Hg-197IV	
	Hg-203	IV
Mixed fission products (MFP)		II
Molybdenum (42)	Mo-99	IV
Neodymium (60)	Nd-147	IV
	Nd-149	IV
Neptunium (93)	Np-237	I
	Np-239	I

Nickel (28)	Ni-56	III
	Ni-59	IV
	Ni-63	IV
	Ni-65	IV
Niobium (41)	Nb-93m	IV
	Nb-95	IV
	Nb-97	IV
	Os-185	IV
Osmium (76)	Os-191m	IV
	Os-191	IV
	Os-193	IV
	Pd-103	IV
Palladium (46)	Pd-109	IV
	P-32	IV
Phosphorus (15)	Pt-191	IV
Platinum (73)	Pt-193	IV
	Pt-193m	IV
	Pt-197m	IV
	Pt-197	IV
	Pu-238****	I
	Pu-239****	I
Plutonium (94)	Pu-240	I
	Pu-241****	I
	Pu-242	I
	Po-210	I
Polonium (84)	K-42	IV
Potassium (19)	K-43	III
	Pr-142	IV
Praseodymium (59)	Pr-143	IV
	Pm-147	IV
Promethium (61)	Pm-149	IV
	Pa-230	I
Protactinium (91)	Pa-231	I
	Pa-233	II
	Ra-223	II
Radium (88)	Ra-224	II
	Ra-226	I
	Ra-228	I
	Rn-220	IV
Radon (86)	Rn-222	II
	Re-183	IV
Rhenium (75)	Re-186	IV
	Re-187	IV
	Re-188	IV

	Re-Natural	IV
Rhodium (45)	Rh-103m	IV
	Rh-105	IV
	Rb-86	IV
Rubidium (37)	Rb-87	IV
	Rb-Natural	IV
	Ru-97	IV
Ruthenium (44)	Ru-103	IV
	Ru-105	IV
	Ru-106	III
	Sm-145	III
Samarium (62)	Sm-147	III
	Sm-151	IV
	Sm-153	IV
	Sc-46	III
Scandium (21)	Sc-47	IV
	Sc-48	IV
	Se-75	IV
Selenium (34)	Si-31	IV
Silicon (14)	Ag-105	IV
Silver (47)	Ag-110m	III
	Ag-111	IV
	Na-22	III
Sodium (11)	Na-24	IV
	Sr-85m	IV
	Sr-85	IV
Strontium (38)	Sr-89	III
	Sr-90	II
	Sr-91	III
	Sr-92	IV
	S-35	IV
	Ta-182	III
	Tc-96m	IV
Technetium (43)	Tc-96	IV
	Tc-97m	IV
	Tc-97	IV
	Tc-99m	IV
	Tc-99	IV
	Te-125m	IV
	Te-127m	IV
Tellurium (52)	Te-127	IV
	Te-129m	III
	Te-129	IV
	Te-131m	III

	Te-132	IV
	Tb-160	III
Terbium (65)	Tl-200	IV
Thallium (81)	Tl-201	IV
	Tl-202	IV
	Tl-204	III
Thorium (90)	Th-227	II
	Th-228	I
	Th-230	I
	Th-231	I
	Th-232	III
	Th-234	II
	Th-Natural	III
Thulium (69)	Tm-168	III
	Tm-170	III
	Tm-171	IV
Tin (50)	Sn-113	IV
	Sn-117m	III
	Sn-121	III
	Sn-125	IV
Tritium (1)	H-3	IV
	H-3 (as a gas, as luminous paint, or adsorbed on solid material.)	VII
Tungsten (74)	W-181	IV
	W-185	IV
	W-187	IV
Uranium (92)	U-230	II
	U-232	I
	U-233****	II
	U-234	II
	U-235****	III
	U-236	II
	U-238	III
	U-Natural	III
	U-Enriched****	III
	U-Depleted	III
Vanadium (23)	V-48	IV
	V-49	III
Xenon (54)	Xe-125	III
	Xe-131m	III
	Xe-131m (uncompressed)***	V
	Xe-133	III
	Xe-133 (uncompressed)***	VI

	Xe-135	II
	Xe-135 (uncompressed)***	V
Ytterbium (70)	Yb-175	IV
Yttrium (39)	Y-88	III
	Y-90	IV
	Y-91m	III
	Y-91	III
	Y-92	IV
	Y-93	IV
Zinc (30)	Zn-65	IV
	Zn-69m	IV
	Zn-69	IV
Zirconium (40)	Zr-93	IV
	Zr-95	III
	Zr-97	IV

NOTE: For mixtures of radionuclides and for radionuclides not included in this paragraph, see §289.254(b)(22) of this title, "Transport Group."

* Atomic number shown in parentheses.

** Atomic mass number shown after the element symbol.

*** Uncompressed means at a pressure not exceeding 1 atmosphere.

**** Fissile material.

m Metastable state.]

[Figure 6: 25 TAC §289.201(q)(1)(A)]

[RADIOACTIVE HALF-LIFE			
Radionuclide	0 to 1000 days	1000 days to 10 ⁶ years	Over 10 ⁶ years
Atomic No. 1-81	Group III	Group II	Group III
Atomic No. 82 and over	Group I	Group I	Group III

Figure 5: 25 TAC §289.201(q)(1)

Facility Category	Years Between Routine Inspections
Educational, Healing Arts	
Educational/Academic (Other Than Medical)	2
Hospital	2
Mammography Systems	1
Medical Academic Facility	2
Chiropractic	3
Dental	4
Medical Private or Group Practice (MD/DO)	3
Podiatric	3
Veterinary	3
Industrial	
Industrial Radiography	1
Minimal Threat Devices	5
Spectroscopy/Spectrography Only	5
Other Industrial Applications	2
Assembler/Consultants	2
Other Services	5
Other	
Laser Light Show (Temporary Site)	1 Per Location
Laser Light Show (Permanent Installation)	1
Other Laser	5
Radio-frequency	5

NOTE: The inspection intervals specified above were based upon the average number of health-related violations per inspection by category, as determined from compliance history data. These intervals will be reviewed at least every two years, and appropriate adjustments will be made.

[Figure 7: 25 TAC §289.201(q)(3)]

Facility Category	Years Between Routine Inspections
Educational, Healing Arts	
Educational/Academic (Other Than Medical)	2
Hospital	2
Mammography Systems	1
Medical Academic Facility	2
Chiropractic	3
Dental	5
Medical Private or Group Practice (MD/DO)	3
Podiatric	3
Veterinary	5
Other	
Industrial Radiography	1
Minimal Threat Devices	5
Spectroscopy/Spectrography Only	5
Other Industrial Applications	2
Assembler/Consultants	3
Other Services	5
Laser Light Show (Temporary Site)	1 Per Location
Laser Light Show (Permanent Installation)	1
Other Laser	5
Radio-frequency	5

NOTE: The inspection intervals specified above were based upon the average number of health-related violations per inspection by category, as determined from compliance history data. These intervals will be reviewed at least every two years, and appropriate adjustments will be made.]

[Figure 8: 25 TAC §289.201(q)(5)(A)(ii)(I)(-a-)]

$[A_1 = \frac{9}{\Gamma} \text{ curies}]$

, where Γ is the gamma-ray constant, corresponding to the dose in roentgens per curie-hour at 1 meter, and the number 9 results from the choice of 1 rem per hour at a distance of 3 meters as the reference dose-equivalent rate.]

[Figure 9: 25 TAC §289.201(q)(5)(A)(ii)(I)(-b-)]

[for $Z \leq 55$, $A_1 = 1000$ Ci (37 TBq); and

for $Z > 55$, $A_1 = 200$ Ci (7.4 TBq), where Z is the atomic number of the nuclide.]

[Figure 10: 25 TAC §289.201(q)(5)(A)(ii)(I)(-d-)]

[$A_1 = 1000 A_3$, where A_3 is the value listed in subparagraph (E) of this paragraph;]

[Figure 11: 25 TAC §289.201(q)(5)(B)(i)]

$[A_1 = 10 \text{ Ci (370 GBq)}$

$A_2 = 0.4 \text{ Ci (14.8 GBq)}$

[Figure 12: 25 TAC §289.201(q)(5)(B)(iii)]

$$F_1 = \frac{\text{Total activity of } R_1}{A_1(R_1)}$$

$$F_2 = \frac{\text{Total activity of } R_2}{A_1(R_2)}$$

$$F_n = \frac{\text{Total activity of } R_n}{A_1(R_n)} \quad \text{and } A_i(R_1, R_2 \dots R_n) \text{ is the value of } A_1 \text{ or } A_2 \text{ as appropriate for the nuclide } R_1, R_2 \dots R_n.]$$

Symbol of radionuclide	Element and atomic number	A ₁ (Ci)	A ₂ (Ci)	Specific Activity (Ci/g)
Ac-227	Actinium (89)	1,000	0.003	7.2 x 10 ¹
Ac-228		10	4	2.2 x 10 ⁶
Ag-105	Silver (47)	40	40	3.1 x 10 ⁴
Ag-110m		7	7	4.7 x 10 ³
Ag-111		100	20	1.6 x 10 ⁵
Am-241	Americium (95)*	8	0.008	3.2
Am-243		8	0.008	1.9 x 10 ⁻¹
Ar-37 (compressed or uncompressed)**	Argon (18)	1,000	1,000	1.0 x 10 ⁵
Ar-41 (uncompressed)**		20	20	4.3 x 10 ⁷
Ar-41 (compressed)**		1	1	4.3 x 10 ⁷
As-73	Arsenic (33)	1,000	400	2.4 x 10 ⁴
As-74		20	20	1.0 x 10 ⁵
As-76		10	10	1.6 x 10 ⁶
As-77		300	20	1.1 x 10 ⁶
At-211	Astatine (85)	200	7	2.1 x 10 ⁶
Au-193	Gold (79)	200	200	9.3 x 10 ⁵
Au-196		30	30	1.2 x 10 ⁵
Au-198		40	20	2.5 x 10 ⁵

Au-199		200	25	2.1×10^5
Ba-131	Barium (56)	40	40	8.7×10^4
Ba-133		40	40	4.0×10^2
Ba-140		20	20	7.3×10^4
Be-7	Beryllium (4)	300	300	3.5×10^5
Bi-206	Bismuth (83)	5	5	9.9×10^4
Bi-207		10	10	2.2×10^2
Bi-210(RaE)		100	4	1.2×10^5
Bi-212		6	6	1.5×10^7
Bk-249	Berkelium (97)	1,000	1	1.8×10^3
Br-77	Bromine (35)	70	25	7.1×10^5
Br-82		6	6	1.1×10^6
C-11	Carbon (6)	20	20	8.4×10^8
C-14		1,000	60	4.6
Ca-45	Calcium (20)	1,000	25	1.9×10^4
Ca-47		20	20	5.9×10^5
Cd-109	Cadmium (48)	1,000	70	2.6×10^3
Cd-115m		30	30	2.6×10^4
Cd-115		80	20	5.1×10^5
Ce-139	Cerium (58)	100	100	6.5×10^3
Ce-141		300	25	2.8×10^4
Ce-143		60	20	6.6×10^5

Ce-144		10	7	3.2×10^3
Cf-249	Californium (98)	2	0.002	3.1
Cf-250		7	0.007	1.3×10^2
Cf-252		2	0.009	6.5×10^2
Cl-36	Chlorine (17)	300	10	3.2×10^{-2}
Cl-38		10	10	1.3×10^4
Cm-242	Curium (96)	200	0.2	3.3×10^3
Cm-243		9	0.009	4.2×10^1
Cm-244		10	0.01	8.2×10^1
Cm-245		6	0.006	1.0×10^{-1}
Cm-246		6	0.006	3.6×10^{-1}
Co-56	Cobalt (27)	5	5	3.0×10^4
Co-57		90	90	8.5×10^3
Co-58m		1,000	1,000	5.9×10^6
Co-58		20	20	3.1×10^4
Co-60		7	7	1.1×10^3
Cr-51	Chromium (24)	600	600	9.2×10^4
Cs-129	Cesium (55)	40	40	7.6×10^5
Cs-131		1,000	1,000	1.0×10^5
Cs-134m		1,000	10	7.4×10^6
Cs-134		10	10	1.2×10^3
Cs-135		1,000	25	8.8×10^{-4}

Cs-136		7	7	7.4×10^4
Cs-137		30	10	9.8×10^1
Cu-64	Copper (29)	80	25	3.8×10^6
Cu-67		200	25	7.9×10^5
Dy-165	Dysprosium (66)	100	20	8.2×10^6
Dy-166		1,000	200	2.3×10^5
Er-169	Erbium (68)	1,000	25	8.2×10^4
Er-171		50	20	2.4×10^6
Eu-152m	Europium (63)	30	30	2.2×10^6
Eu-152		20	10	1.9×10^2
Eu-154		10	5	1.5×10^2
Eu-155		400	60	1.4×10^3
F-18	Fluorine (9)	20	20	9.3×10^7
Fe-52	Iron (26)	5	5	7.3×10^6
Fe-55		1,000	1,000	2.2×10^3
Fe-59		10	10	4.9×10^4
Ga-67	Gallium (31)	100	100	6.0×10^5
Ga-68		20	20	4.0×10^7
Ga-72		7	7	3.1×10^6
Gd-153	Gadolinium (64)	200	100	3.6×10^3
Gd-159		300	20	1.1×10^6
Ge-68	Germanium (32)	20	10	7.0×10^3

Ge-71		1,000	1,000	1.6×10^5
H-3	Hydrogen (1)		see T-Tritium	
Hf-181	Hafnium (72)	30	25	1.6×10^4
Hg-197m	Mercury (80)	200	200	6.6×10^5
Hg-197		200	200	2.5×10^5
Hg-203		80	25	1.4×10^4
Ho-166	Holmium (67)	30	30	6.9×10^5
I-123	Iodine (53)	50	50	1.9×10^6
I-125		1,000	70	1.7×10^4
I-126		40	10	7.8×10^4
I-129		1,000	2	1.6×10^4
I-131		40	10	1.2×10^5
I-132		7	7	1.1×10^7
I-133		30	10	1.1×10^6
I-134		8	8	2.7×10^7
I-135		10	10	3.5×10^6
In-111	Indium (49)	30	25	4.2×10^5
In-113m		60	60	1.6×10^7
In-114m		30	20	2.3×10^4
In-115m		100	20	6.1×10^6
Ir-190	Iridium (77)	10	10	6.2×10^4
Ir-192		20	10	9.1×10^3

Ir-194		10	10	8.5×10^5
K-42	Potassium (19)	10	10	6.0×10^6
K-43		20	10	3.3×10^6
Kr-85m (uncompressed)**	Krypton (36)	100	100	8.4×10^6
Kr-85m (compressed)**		3	3	8.4×10^6
Kr-85 (uncompressed)**		1,000	1,000	4.0×10^2
Kr-85 (compressed)**		5	5	4.0×10^2
Kr-87 (uncompressed)**		20	20	2.8×10^7
Kr-87 (compressed)**		0.6	0.6	2.8×10^7
La-140	Lanthanum (57)	30	30	5.6×10^5
Lu-177	Lutetium (71)	300	25	1.1×10^5
MFP Mixed Fission products		10	0.4	---
Mg-28	Magnesium (12)	6	6	5.2×10^6
Mn-52	Manganese (25)	5	5	4.4×10^5
Mn-54		20	20	8.3×10^3
Mn-56		5	5	2.2×10^7
Mo-99	Molybdenum (42)	100	20	4.7×10^5
N-13	Nitrogen (7)	20	10	1.5×10^9
Na-22	Sodium (11)	8	8	6.3×10^3
Na-24		5	5	8.7×10^6
Nb-93m	Niobium (41)	1,000	200	1.1×10^3
Nb-95		20	20	3.9×10^4

Nb-97		20	20	2.6×10^7
Nd-147	Neodymium (60)	100	20	8.0×10^4
Nd-149		30	20	1.1×10^7
Ni-59	Nickel (28)	1,000	900	8.1×10^2
Ni-63		1,000	100	4.6×10^1
Ni-65		10	10	1.9×10^7
Np-237	Neptunium (93)	5	0.005	6.9×10^4
Np-239		200	25	2.3×10^5
Os-185	Osmium (76)	20	20	7.3×10^3
Os-191		600	200	4.6×10^4
Os-191m		200	200	1.2×10^6
Os-193		100	20	5.3×10^5
P-32	Phosphorus (15)	30	30	2.9×10^5
Pa-230	Protactinium (91)	20	0.8	3.2×10^4
Pa-231		2	0.002	4.5×10^2
Pa-233		100	100	2.1×10^4
Pb-201	Lead (82)	20	20	1.7×10^6
Pb-210		100	0.2	8.8×10^1
Pb-212		6	5	1.4×10^6
Pd-103	Palladium (46)	1,000	700	7.5×10^4
Pd-109		100	20	2.1×10^6
Pm-147	Promethium (61)	1,000	25	9.4×10^2

Pm-149		100	20	4.2 x 10⁵
Po-210	Polonium (84)	200	0.2	4.5 x 10³
Pr-142	Praseodymium (59)	10	10	1.2 x 10⁴
Pr-143		300	20	6.6 x 10⁴
Pt-191	Platinum (78)	100	100	2.3 x 10⁵
Pt-193m		200	200	2.0 x 10⁵
Pt-197m		300	20	1.2 x 10⁷
Pt-197		300	20	8.8 x 10⁵
Pu-238	Plutonium (94)*	3	0.003	1.7 x 10¹
Pu-239		2	0.002	6.2 x 10⁻²
Pu-240		2	0.002	2.3 x 10⁻¹
Pu-241		1,000	0.1	1.1 x 10²
Pu-242		3	0.003	3.9 x 10⁻³
Ra-223	Radium (88)	50	0.2	5.0 x 10⁴
Ra-224		6	0.5	1.6 x 10⁵
Ra-226		10	0.05	1.0
Ra-228		10	0.05	2.3 x 10²
Rb-81	Rubidium (37)	30	24	8.2 x 10⁶
Rb-86		30	30	8.1 x 10⁴
Rb-87		Unlimited	Unlimited	6.6 x 10⁻⁸
Rb (natural)		Unlimited	Unlimited	1.8 x 10⁻⁸
Re-186	Rhenium(75)	100	20	1.9 x 10⁵

Re-187		Unlimited	Unlimited	3.8×10^3
Re-188		10	10	1.0×10^6
Re (natural)		Unlimited	Unlimited	2.4×10^3
Rh-103m	Rhodium (45)	1,000	1,000	3.2×10^7
Rh-105		200	25	8.2×10^5
Rn-222	Radon (86)	10	2	1.5×10^5
Ru-97	Ruthenium (44)	80	80	5.5×10^5
Ru-103		30	25	3.2×10^4
Ru-105		20	20	6.6×10^6
Ru-106		10	7	3.4×10^3
S-35	Sulphur (16)	1,000	60	4.3×10^4
Sb-122	Antimony (51)	30	30	3.9×10^5
Sb-124		5	5	1.8×10^4
Sb-125		40	25	1.4×10^3
Sc-46	Scandium (21)	8	8	3.4×10^4
Sc-47		200	20	8.2×10^5
Sc-48		5	5	1.5×10^6
Se-75	Selenium (34)	40	40	1.4×10^4
Si-31	Silicon (14)	100	20	3.9×10^7
Sm-147	Samarium (62)	Unlimited	Unlimited	2.0×10^3
Sm-151		1,000	90	2.6×10^1
Sm-153		300	20	4.4×10^5

Sn-113	Tin (50)	60	60	1.0×10^4
Sn-119m		100	100	4.4×10^3
Sn-125		10	10	1.1×10^5
Sr-85m	Strontium (38)	80	80	3.2×10^7
Sr-85		30	30	2.4×10^4
Sr-85m		50	50	1.2×10^7
Sr-89		100	10	2.9×10^4
Sr-90		10	0.4	1.5×10^2
Sr-91		10	10	3.6×10^6
Sr-92		10	10	1.3×10^7
T (uncompressed)**	Tritium (1)	1,000	1,000	9.7×10^3
T (compressed)**		1,000	1,000	9.7×10^3
T (activated luminous paint)		1,000	1,000	9.7×10^3
T (adsorbed on solid carrier)		1,000	1,000	9.7×10^3
T (tritiated water)		1,000	1,000	9.7×10^3
T (other forms)		20	20	9.7×10^3
Ta-182	Tantalum (73)	20	20	6.2×10^3
Tb-160	Terbium (65)	20	10	1.1×10^4
Tc-96m	Technetium (43)	1,000	1,000	3.8×10^7
Tc-96		6	6	3.2×10^5
Tc-97m		1,000	200	1.5×10^4
Tc-97		1,000	400	1.4×10^3

Tc-99m		100	100	5.2×10^6
Tc-99		1,000	25	1.7×10^{-2}
Te-125m	Tellurium (52)	1,000	100	1.8×10^4
Te-127m		300	20	4.0×10^4
Te-127		300	20	2.6×10^6
Te-129m		30	10	2.5×10^4
Te-129		100	20	2.0×10^7
Te-131m		10	10	8.0×10^5
Te-132		7	7	3.1×10^5
Th-227	Thorium (90)	200	0.2	3.2×10^4
Th-228		6	0.008	8.3×10^2
Th-230		3	0.003	1.9×10^{-2}
Th-231		1,000	25	5.3×10^5
Th-232		Unlimited	Unlimited	1.1×10^{-7}
Th-234		10	10	2.3×10^4
Th (natural)		Unlimited	Unlimited	2.2×10^{-7}
Th (irradiated)***		---	---	---
Tl-200	Thallium (81)	20	20	5.8×10^5
Tl-201		200	200	2.2×10^5
Tl-202		40	40	5.4×10^4
Tl-204		300	10	4.3×10^2
Tm-170	Thulium (69)	300	10	6.0×10^3

Tm-171		1,000	100	1.1×10^3
U-230	Uranium (92)	100	0.1	2.7×10^4
U-232		30	0.03	2.1×10^1
U-233		100	0.1	9.5×10^{-3}
U-234		100	0.1	6.2×10^{-3}
U-235		100	0.2	2.1×10^{-6}
U-236		200	0.2	6.3×10^{-5}
U-238		Unlimited	Unlimited	3.3×10^{-7}
U (natural)		Unlimited	Unlimited	(see subparagraph (F) of this paragraph)
U (enriched)	<20%	Unlimited	Unlimited	(see subparagraph (F) of this paragraph)
	20% or greater	100	0.1	(see subparagraph (F) of this paragraph)
U (depleted)		Unlimited	Unlimited	(see subparagraph (F) of this paragraph)
U (irradiated)***		---	---	---
V-48	Vanadium (23)	6	6	1.7×10^5
W-181	Tungsten (74)	200	100	5.0×10^3
W-185		1,000	25	9.7×10^{-3}

W-187		40	20	7.0×10^5
Xe-133 (compressed)**		5	5	1.9×10^5
Xe-135 (uncompressed)**		70	70	2.5×10^5
Xe-135 (compressed)**		2	2	2.5×10^5
Y-87	Yttrium (39)	20	20	4.5×10^1
Y-90		10	10	2.5×10^5
Y-91m		30	30	4.1×10^7
Y-91		30	30	2.5×10^4
Y-92		10	10	9.5×10^6
Y-93		10	10	3.2×10^6
Yb-169	Ytterbium (70)	80	80	2.3×10^5
Yb-175		400	25	1.8×10^5
Zn-65	Zinc (30)	30	30	8.0×10^3
Zn-69m		40	20	3.3×10^6
Zn-69		300	20	5.3×10^7
Zr-93	Zirconium (40)	1,000	200	3.5×10^3
Zr-95		20	20	2.1×10^4
Zr-97		20	20	2.0×10^6

* For shipments solely within the United States, the A_1 value is 20 curies for americium and plutonium contained in Am-Be or Pu-Be neutron sources or in nuclear powered pacemakers.

** For the purpose of this subparagraph, compressed gas means a gas at a pressure that exceeds the ambient atmospheric pressure at the location where the containment system was closed.

*** The values of A_1 and A_2 must be calculated in accordance with the procedure specified in subparagraph (B)(iii) of this paragraph, taking into account the activity of the fission products and of the uranium-233 in addition to that of the thorium.]

[Figure 14: 25 TAC §289.201(q)(5)(D)]

$E_{\max}(\text{MeV})$	$A_1(\text{Ci})$
< 0.5	1,000
$0.5 - < 1.0$	300
$1.0 - < 1.5$	100
$1.5 - < 2.0$	30
≥ 2.0	10

[Figure 15: 25 TAC §289.201(q)(5)(E)]

A ₃			
Atomic Number	Half-life less than 1000 days	Half-life 1000 days to 10 ⁶ years	Half-life greater than 10 ⁶ years
1 to 81	3 Ci	0.05 Ci	3 Ci
82 and above	0.002 Ci	0.002 Ci	3 Ci]

[Figure 16: 25 TAC §289.201(q)(5)(F)]

Thorium and Uranium Enrichment* wt % U-235 present	Specific Activity	
	Ci/g	g/Ci
0.45	5.0×10^{-7}	2.0×10^6
0.72 (natural)	7.06×10^{-7}	1.42×10^6
1.0	7.6×10^{-7}	1.3×10^6
1.5	1.0×10^{-6}	1.0×10^6
5.0	2.7×10^{-6}	3.7×10^5
10.0	4.8×10^{-6}	2.1×10^5
20.0	1.0×10^{-5}	1.0×10^5
35.0	2.0×10^{-5}	5.0×10^4
50.0	2.5×10^{-5}	4.0×10^4
90.0	5.8×10^{-5}	1.7×10^4
93.0	7.0×10^{-5}	1.4×10^4
95.0	9.1×10^{-5}	1.1×10^4
Natural Thorium	2.2×10^{-7}	4.6×10^6

* The figures for uranium include representative values for the activity of the uranium-234 which is concentrated during the enrichment process. The activity for thorium includes the equilibrium concentration of thorium-228.

Figure 10: 25 TAC §289.202(ggg)(4)(A)(iii)(V)

Concentration Radionuclide	curie/cubic meter*	nanocurie/gram**
C-14	8	
C-14 in activated metal	80	
Ni-59 in activated metal	220	
Nb-94 in activated metal	0.2	
Tc-99	3	
I-129	0.08	
Alpha emitting transuranic radionuclides with half- life greater than five years		100
Pu-241		3,500
Cm-242		20,000
Ra-226		100

*** To convert the Ci/m³ values to gigabecquerel (GBq) per cubic meter, multiply the Ci/m³ value by 37.**

**** To convert the nCi/g values to becquerel (Bq) per gram, multiply the nCi/g value by 37.**

[Figure 10: 25 TAC §289.202(ggg)(5)(A)(iii)(V)]

Concentration Radionuclide	curie/cubic meter*	nanocurie/gram**
C-14	8	
C-14 in activated metal	80	
Ni-59 in activated metal	220	
Nb-94 in activated metal	0.2	
Tc-99	3	
I-129	0.08	
Alpha emitting transuranic radionuclides with half- life greater than five years		100
Pu-241		3,500
Cm-242		20,000
Ra-226		100

* To convert the Ci/m³ values to gigabecquerel (GBq) per cubic meter, multiply the Ci/m³ value by 37.

** To convert the nCi/g values to becquerel (Bq) per gram, multiply the nCi/g value by 37.]

Figure 11: 25 TAC §289.202(ggg)(4)[(5)](A)(iv)(VI)

Radionuclide	Concentration, curie/cubic meter*		
	Column 1	Column 2	Column 3
Total of all radio-nuclides with less than 5-year half-life	700	*	*
H-3	40	*	*
Co-60	700	*	*
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7,000
Sr-90	0.04	150	7,000
Cs-137	1	44	4,600

* To convert the Ci/m³ value to gigabecquerel (Gbg) per cubic meter, multiply the Ci/m³ value by 37. There are no limits established for these radionuclides in Class B or C wastes. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. These wastes shall be Class B unless the concentrations of other radionuclides in this table determine the waste to be Class C independent of these radionuclides.

[Figure 11: 25 TAC §289.202(ggg)(5)(A)(iv)(VI)]

Radionuclide	Concentration, curie/cubic meter*		
	Column 1	Column 2	Column 3
Total of all radionuclides with less than 5-year half-life	700	*	*
H-3	40	*	*
Co-60	700	*	*
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7,000
Sr-90	0.04	150	7,000
Cs-137	1	44	4,600

* To convert the Ci/m³ value to gigabecquerel (Gbg) per cubic meter, multiply the Ci/m³ value by 37. There are no limits established for these radionuclides in Class B or C wastes. Practical considerations such as the effects of external radiation and internal heat generation on transportation, handling, and disposal will limit the concentrations for these wastes. These wastes shall be Class B unless the concentrations of other radionuclides in this table determine the waste to be Class C independent of these radionuclides.]

<u>Specific Section</u>	<u>Name of Record</u>	<u>Time Interval Required for Record Keeping</u>
subsection (ll)(4) of this section	Records at Additional Authorized Use/ Storage Sites	While site is authorized on license/registration
subsection (mm)(1)(A) of this section	Radiation Protection Programs	Until termination of license/ registration
subsection (mm)(1)(B) of this section	Program Audits	3 years
subsection (nn)(1) of this section	Routine Surveys, Instrument Calibrations and Package Surveys	3 years
subsection (nn)(2) of this section	Surveys, Measurements, Calculations Used for Dose Determination; Results of Air Sampling, Bioassays; Measurements, Calculations Used to Determine Release of Radioactive Effluents	Until termination of license/ registration
subsection (oo) of this section	Tests for leakage/ contamination of sealed sources	5 years
subsection (pp) of this section	Lifetime Cumulative Occupational Radiation Dose, TRC Form 21-2	Until termination of license
subsection (pp) of this section	Records Used to Prepare TRC Form 21-2	3 years
subsection (qq)(B) of this section	Planned Special Exposures	Until termination of license

subsections (rr)(1-3) of this section	Individual Monitoring Results; TRC Form 21-3	Update annually; Maintain until termination of license/ registration
subsection (rr)(5) of this section	Records Used to Prepare TRC Form 21-3	3 years
subsection (rr)(4) of this section	Embryo/Fetus Dose	Until termination of license/ registration
subsection (ss) of this section	Dose to Individual Members of the Public	Until termination of license/ registration
subsection (tt) of this section	Discharge, Treatment, or Transfer for Disposal	Until termination of license/ registration
subsection (uu) of this section	Entry Control Device Testing for Very High Radiation Areas	3 years

<u>Specific Section</u>	<u>Name of Record</u>	<u>Time Interval Required for Record Keeping</u>
subsection (ll)(4) of this section	Records at Additional Authorized Use/ Storage Sites	While site is authorized on license/registration
subsection (mm)(1)(A) of this section	Radiation Protection Programs	Until termination of license/ registration
subsection (mm)(1)(B) of this section	Program Audits	3 years
subsection (nn)(1) of this section	Routine Surveys, Instrument Calibrations and Package Surveys	3 years
subsection (nn)(2) of this section	Surveys, Measurements, Calculations Used for Dose Determination; Results of Air Sampling, Bioassays; Measurements, Calculations Used to Determine Release of Radioactive Effluents	Until termination of license/ registration
subsection (oo) of this section	Tests for leakage/ contamination of sealed sources	5 years
subsection (pp) of this section	Lifetime Cumulative Occupational Radiation Dose, TRC Form 21-2	Until termination of license
subsection (pp) of this section	Records Used to Prepare TRC Form 21-2	3 years
subsection (qq)(B) of this section	Planned Special Exposures	Until termination of license

subsections (rr)(1-3) of this section	Individual Monitoring Results; TRC Form 21-3	Update annually; Maintain until termination of license/ registration
subsection (rr)(5) of this section	Records Used to Prepare TRC Form 21-3	3 years
subsection (rr)(4) of this section	Embryo/Fetus Dose	Until termination of license/ registration
subsection (ss) of this section	Dose to Individual Members of the Public	Until termination of license/ registration
subsection (tt) of this section	Discharge, Treatment, or Transfer for Disposal	Until termination of license/ registration
subsection (uu) of this section	Entry Control Device Testing for Very High Radiation Areas	3 years]

NUCLIDE ^a	AVERAGE ^{bef}	MAXIMUM ^{bdf}	REMOVABLE ^{bcef}
U-nat, U-235, U-238, and associated decay products except Ra-226, Th-230, Ac-227, and Pa-231	5,000 dpm alpha/ 100 cm ²	15,000 dpm alpha/ 100 cm ²	1,000 dpm alpha/ 100 cm ²
Transuranics, Ra-223, Ra-224, Ra-226, Ra-228, Th-nat, Th-228, Th-230, Th-232, U-232, Pa-231, Ac-227, Sr-90, I-129	1,000 dpm/100 cm ²	3,000 dpm/100 cm ²	200 dpm/100 cm ²
Beta-gamma emitters (nuclides with decay modes other than alpha emission or spontaneous fission) except Sr-90 and others noted above.	5,000 dpm beta, gamma/100 cm ²	15,000 dpm beta, gamma/100 cm ²	1,000 dpm beta, gamma/100 cm ²

- ^a Where surface contamination by both alpha and beta-gamma emitting nuclides exists, the limits established for alpha and beta-gamma emitting nuclides should apply independently.
- ^b As used in this table, dpm (disintegrations per minute) means the rate of emission by radioactive material as determined by correcting the counts per minute observed by an appropriate detector for background, efficiency, and geometric factors associated with the instrumentation.
- ^c Measurements of average contamination level should not be averaged over more than 1 square meter. For objects of less surface area, the average should be derived for each object.
- ^d The maximum contamination level applies to an area of not more than 100 cm².

- e The amount of removable radioactive material per 100 cm² of surface area should be determined by wiping that area with dry filter or soft absorbent paper, applying moderate pressure, and assessing the amount of radioactive material on the wipe with an appropriate instrument of known efficiency. When removable contamination on objects of less surface area is determined, the pertinent levels should be reduced proportionally and the entire surface should be wiped.
- f The average and maximum radiation levels associated with surface contamination resulting from beta-gamma emitters should not exceed 0.2 mrad/hr at 1 centimeter and 1.0 mrad/hr at 1 centimeter, respectively, measured through not more than 7 mg/cm² of total absorber.

NUCLIDE ^a	AVERAGE ^{bef}	MAXIMUM ^{bdf}	REMOVABLE ^{bcef}
<hr/>			
U-nat, U-235, U-238, and associated decay products except Ra-226, Th-230, Ac-227, and Pa-231	5,000 dpm alpha/ 100 cm ²	15,000 dpm alpha/ 100 cm ²	1,000 dpm alpha/ 100 cm ²
Transuranics, Ra-223, Ra-224, Ra-226, Ra-228, Th-nat, Th-228, Th-230, Th-232, U-232, Pa-231, Ac-227, Sr-90, I-129	1,000 dpm/100 cm ²	3,000 dpm/100 cm ²	200 dpm/100 cm ²
Beta-gamma emitters (nuclides with decay modes other than alpha emission or spontaneous fission) except Sr-90 and others noted above.	5,000 dpm beta, gamma/100 cm ²	15,000 dpm beta, gamma/100 cm ²	1,000 dpm beta, gamma/100 cm ²

- ^a Where surface contamination by both alpha and beta-gamma emitting nuclides exists, the limits established for alpha and beta-gamma emitting nuclides should apply independently.
- ^b As used in this table, dpm (disintegrations per minute) means the rate of emission by radioactive material as determined by correcting the counts per minute observed by an appropriate detector for background, efficiency, and geometric factors associated with the instrumentation.
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- f The average and maximum radiation levels associated with surface contamination resulting from beta-gamma emitters should not exceed 0.2 mrad/hr at 1 centimeter and 1.0 mrad/hr at 1 centimeter, respectively, measured through not more than 7 mg/cm² of total absorber.]

Nuclides	Concentrations Limit (Ci/m ³)	Annual Generator Disposal Limit (Ci/yr)
F-18	3×10^{-1}	8
Si-31	$1 \times 10^{+2}$	$3 \times 10^{+3}$
Na-24	9×10^{-4}	2×10^{-2}
P-32	2	$5 \times 10^{+1}$
P-33	10	$3 \times 10^{+2}$
S-35	9	$2 \times 10^{+2}$
Ar-41	3×10^{-1}	8
K-42	2×10^{-2}	5×10^{-1}
Ca-45	4	$1 \times 10^{+2}$
Ca-47	2×10^{-2}	5×10^{-1}
Sc-46	2×10^{-3}	5×10^{-2}
Cr-51	6×10^{-1}	$2 \times 10^{+1}$
Fe-59	5×10^{-3}	1×10^{-1}
Co-57	6×10^{-2}	2
Co-58	1×10^{-2}	3×10^{-1}
Zn-65	7×10^{-3}	2×10^{-1}
Ga-67	3×10^{-1}	8
Se-75	5×10^{-2}	1
Br-82	2×10^{-3}	5×10^{-2}
Rb-86	4×10^{-2}	1
Sr-85	2×10^{-2}	5×10^{-1}
Sr-89	8	$2 \times 10^{+2}$
Y-90	4	$1 \times 10^{+2}$
Y-91	4×10^{-1}	10
Zr-95	8×10^{-3}	2×10^{-1}
Nb-95	8×10^{-3}	2×10^{-1}
Mo-99	5×10^{-2}	1
Tc-99m	1	$3 \times 10^{+1}$
Rh-106	1	$3 \times 10^{+1}$
Ag-110m	2×10^{-3}	5×10^{-2}
Cd-115m	2×10^{-1}	5
In-111	9×10^{-2}	2

In-113m	9	$2 \times 10^{+2}$
Sn-113	6×10^{-2}	2
Sn-119	$2 \times 10^{+1}$	$5 \times 10^{+2}$
Sb-124	2×10^{-3}	5×10^{-2}
Te-129	2×10^{-1}	5
I-123	4×10^{-1}	$1 \times 10^{+1}$
I-125	7×10^{-1}	$2 \times 10^{+1}$
I-131	4×10^{-2}	1
I-133	2×10^{-2}	5×10^{-1}
Xe-127	8×10^{-2}	2
Xe-133	1	$3 \times 10^{+1}$
Ba-140	2×10^{-3}	5×10^{-2}
La-140	2×10^{-3}	5×10^{-2}
Ce-141	4×10^{-1}	$1 \times 10^{+1}$
Ce-144	1×10^{-3}	3×10^{-2}
Pr-143	6	$2 \times 10^{+2}$
Nd-147	7×10^{-2}	2
Yb-169	6×10^{-2}	2
Ir-192	1×10^{-2}	3×10^{-1}
Au-198	3×10^{-2}	8×10^{-1}
Hg-197	8×10^{-1}	$2 \times 10^{+1}$
Tl-201	4×10^{-1}	$1 \times 10^{+1}$
Hg-203	1×10^{-1}	3

NOTE: In any case where there is a mixture in waste of more than one radionuclide, the limiting values for purposes of this paragraph shall be determined as follows:

For each radionuclide in the mixture, calculate the ratio between the quantity present in the mixture and the limit established in this paragraph for the specific radionuclide when not in a mixture. The sum of such ratios for all the radionuclides in the mixture may not exceed "1" (i.e., "unity").

Examples: If radionuclides a, b, and c are present in concentrations C_a , C_b , and C_c , and if the applicable concentrations are CL_a , CL_b , and CL_c respectively, then the concentrations shall be limited so that the following relationship exists:

$$(C_a/CL_a) + (C_b/CL_b) + (C_c/CL_c) \leq 1$$

If the total curies for radionuclides a, b, and c are represented A_a , A_b , and A_c , and the annual curie limit for each radionuclide is AL_a , AL_b , and AL_c , then the generator is limited to the following:

$$(A_a/AL_a) + (A_b/AL_b) + (A_c/AL_c) \leq 1$$

[Nuclides]	Concentrations Limit (Ci/m ³)	Annual Generator Disposal Limit (Ci/yr)
F-18	3×10^{-1}	8
Si-31	$1 \times 10^{+2}$	$3 \times 10^{+3}$
Na-24	9×10^{-4}	2×10^{-2}
P-32	2	$5 \times 10^{+1}$
P-33	10	$3 \times 10^{+2}$
S-35	9	$2 \times 10^{+2}$
Ar-41	3×10^{-1}	8
K-42	2×10^{-2}	5×10^{-1}
Ca-45	4	$1 \times 10^{+2}$
Ca-47	2×10^{-2}	5×10^{-1}
Sc-46	2×10^{-3}	5×10^{-2}
Cr-51	6×10^{-1}	$2 \times 10^{+1}$
Fe-59	5×10^{-3}	1×10^{-1}
Co-57	6×10^{-2}	2
Co-58	1×10^{-2}	3×10^{-1}
Zn-65	7×10^{-3}	2×10^{-1}
Ga-67	3×10^{-1}	8
Se-75	5×10^{-2}	1
Br-82	2×10^{-3}	5×10^{-2}
Rb-86	4×10^{-2}	1
Sr-85	2×10^{-2}	5×10^{-1}
Sr-89	8	$2 \times 10^{+2}$
Y-90	4	$1 \times 10^{+2}$
Y-91	4×10^{-1}	10
Zr-95	8×10^{-3}	2×10^{-1}
Nb-95	8×10^{-3}	2×10^{-1}
Mo-99	5×10^{-2}	1
Tc-99m	1	$3 \times 10^{+1}$
Rh-106	1	$3 \times 10^{+1}$
Ag-110m	2×10^{-3}	5×10^{-2}
Cd-115m	2×10^{-1}	5
In-111	9×10^{-2}	2

In-113m	9	$2 \times 10^{+2}$
Sn-113	6×10^{-2}	2
Sn-119	$2 \times 10^{+1}$	$5 \times 10^{+2}$
Sb-124	2×10^{-3}	5×10^{-2}
Te-129	2×10^{-1}	5
I-123	4×10^{-1}	$1 \times 10^{+1}$
I-125	7×10^{-1}	$2 \times 10^{+1}$
I-131	4×10^{-2}	1
I-133	2×10^{-2}	5×10^{-1}
Xe-127	8×10^{-2}	2
Xe-133	1	$3 \times 10^{+1}$
Ba-140	2×10^{-3}	5×10^{-2}
La-140	2×10^{-3}	5×10^{-2}
Ce-141	4×10^{-1}	$1 \times 10^{+1}$
Ce-144	1×10^{-3}	3×10^{-2}
Pr-143	6	$2 \times 10^{+2}$
Nd-147	7×10^{-2}	2
Yb-169	6×10^{-2}	2
Ir-192	1×10^{-2}	3×10^{-1}
Au-198	3×10^{-2}	8×10^{-1}
Hg-197	8×10^{-1}	$2 \times 10^{+1}$
Tl-201	4×10^{-1}	$1 \times 10^{+1}$
Hg-203	1×10^{-1}	3

NOTE: In any case where there is a mixture in waste of more than one radionuclide, the limiting values for purposes of this paragraph shall be determined as follows:

For each radionuclide in the mixture, calculate the ratio between the quantity present in the mixture and the limit established in this paragraph for the specific radionuclide when not in a mixture. The sum of such ratios for all the radionuclides in the mixture may not exceed "1" (i.e., "unity").

Examples: If radionuclides a, b, and c are present in concentrations C_a , C_b , and C_c , and if the applicable concentrations are CL_a , CL_b , and CL_c respectively, then the concentrations shall be limited so that the following relationship exists:

$$(C_a/CL_a) + (C_b/CL_b) + (C_c/CL_c) \leq 1$$

If the total curies for radionuclides a, b, and c are represented A_a , A_b , and A_c , and the annual curie limit for each radionuclide is AL_a , AL_b , and AL_c , then the generator is limited to the following:

$$(A_a/AL_a) + (A_b/AL_b) + (A_c/AL_c) \leq 1$$

Figure 15: 25 TAC §289.202(ggg)(8)

<u>Isotope</u>	<u>Concentration Limits* (pCi/g)</u>
Americium-241	6
Antimony-125	100
Bismuth-207	60
Cadmium-109	200
Carbon-14	800
Cesium-137	40
Cobalt-60	300
Europium-152	80
Europium-154	20
Europium-155	200
Hydrogen-3	3,000
Iodine-125	200
Iodine-129	200
Iodine-131	60
Iridium-192	40
Iron-55	2,000
Nickel-63	700
Plutonium-238	6
Plutonium-239	6
Plutonium-240	6
Promethium-147	200
Scandium-46	40
Sodium-22	30
Strontium-90	40
Technetium-99	200
Thallium-204	60
Thorium-230	6
Thorium-232	8
Uranium-234	6
Uranium-238	8

* It must be emphasized that every effort must be made to reduce contamination to background levels and that the limits in this table only apply when it is technically or economically impractical to do so.

[Figure 15: 25 TAC §289.202(ggg)(9)]

<u>Isotope</u>	<u>Concentration Limits* (pCi/g)</u>
Americium-241	6
Antimony-125	100
Bismuth-207	60
Cadmium-109	200
Carbon-14	800
Cesium-137	40
Cobalt-60	300
Europium-152	80
Europium-154	20
Europium-155	200
Hydrogen-3	3,000
Iodine-125	200
Iodine-129	200
Iodine-131	60
Iridium-192	40
Iron-55	2,000
Nickel-63	700
Plutonium-238	6
Plutonium-239	6
Plutonium-240	6
Promethium-147	200
Scandium-46	40
Sodium-22	30
Strontium-90	40
Technetium-99	200
Thallium-204	60
Thorium-230	6
Thorium-232	8
Uranium-234	6
Uranium-238	8

* It must be emphasized that every effort must be made to reduce contamination to background levels and that the limits in this table only apply when it is technically or economically impractical to do so.]

Figure 16: 25 TAC §289.202(gg)(9)

CUMULATIVE OCCUPATIONAL EXPOSURE HISTORY										[AGENCY]	
1. NAME (LAST, FIRST, MIDDLE INITIAL)		2. IDENTIFICATION NUMBER		3. ID TYPE		4. SEX		5. DATE OF BIRTH			
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ESTIMATE NO RECORD		10. ROUTINE PSE			
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE		18. TODE			
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ESTIMATE NO RECORD		10. ROUTINE PSE			
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE		18. TODE			
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ESTIMATE NO RECORD		10. ROUTINE PSE			
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE		18. TODE			
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ESTIMATE NO RECORD		10. ROUTINE PSE			
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE		18. TODE			
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ESTIMATE NO RECORD		10. ROUTINE PSE			
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE		18. TODE			
19. SIGNATURE OF MONITORED INDIVIDUAL		20. DATE SIGNED		21. CERTIFYING ORGANIZATION		22. SIGNATURE OF DESIGNEE		23. DATE SIGNED			

Figure 16: 25 TAC §289.202(gg)(9)

INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE COMPLETION OF TAC FORM 21-2 (All doses should be stated in rads)															
<p>1. Type or print the full name of the monitored individual in the order of last name (include "Jr.", "Sr.", "III," etc.), first name, middle initial (if applicable).</p> <p>2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.</p> <p>3. Enter the code for the type of identification used as shown below:</p> <table border="1"> <thead> <tr> <th>CODE</th> <th>ID TYPE</th> </tr> </thead> <tbody> <tr> <td>SSN</td> <td>U.S. Social Security Number</td> </tr> <tr> <td>PPN</td> <td>Passport Number</td> </tr> <tr> <td>CSI</td> <td>Canadian Social Insurance Number</td> </tr> <tr> <td>WPN</td> <td>Work Permit Number</td> </tr> <tr> <td>IND</td> <td>INDEX Identification Number</td> </tr> <tr> <td>OTH</td> <td>Other</td> </tr> </tbody> </table> <p>4. Check the box that denotes the sex of the individual being monitored.</p> <p>5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.</p> <p>6. Enter the monitoring period for which this report is filed. The format should be MM/DD/YY - MM/DD/YY.</p> <p>7. Enter the name of the licensee, registrant, or facility not licensed by the Agency that provided monitoring.</p> <p>8. Enter the Agency license or registration number or numbers.</p> <p>9. Place an "X" in Record, Estimate, or No Record. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee or registrant intends to assign the record dose on the basis of TLD results that are not yet available.</p>	CODE	ID TYPE	SSN	U.S. Social Security Number	PPN	Passport Number	CSI	Canadian Social Insurance Number	WPN	Work Permit Number	IND	INDEX Identification Number	OTH	Other	<p>10. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned special exposures received during the monitoring period. If more than one PSE was received in a single year, the licensee should sum them and report the total of all PSEs.</p> <p>11. Enter the deep dose equivalent (DDE) to the whole body.</p> <p>12. Enter the eye dose equivalent (EDE) recorded for the lens of the eye.</p> <p>13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE, WBI).</p> <p>14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE, ME).</p> <p>15. Enter the committed effective dose equivalent (CEDE).</p> <p>16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ.</p> <p>17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 15.</p> <p>18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.</p> <p>19. Signature of the monitored individual. The signature of the monitored individual on this form indicates that the information contained on the form is complete and correct to the best of his or her knowledge.</p> <p>20. Enter the date this form was signed by the monitored individual.</p> <p>21. [OPTIONAL] Enter the name of the licensee, registrant or facility not licensed by the Agency, providing monitoring for exposure to radon as a DOE facility or the employer if the individual is not employed by the licensee or registrant and the employer chooses to maintain exposure records for its employees.</p>
CODE	ID TYPE														
SSN	U.S. Social Security Number														
PPN	Passport Number														
CSI	Canadian Social Insurance Number														
WPN	Work Permit Number														
IND	INDEX Identification Number														
OTH	Other														
<p>22. [OPTIONAL] Signature of the person designated to represent the licensee, registrant or employer entered in item 21. The licensee, registrant or employer who chooses to countersign the form should have on file documentation of all the information on the Agency Form Y being signed.</p> <p>23. [OPTIONAL] Enter the date this form was signed by the designated representative.</p>															

CUMULATIVE OCCUPATIONAL EXPOSURE HISTORY

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[Figure 16: 25 TAC §289.202(ggg)(10)]

INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE COMPLETION OF TRC FORM 21-2 (All doses should be stated in rads)	
<p>1. Type or print the full name of the monitored individual in the order of last name (include "Jr," "Sr," "III," etc.), first name, middle initial (if applicable).</p> <p>2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.</p> <p>3. Enter the code for the type of identification used as shown below:</p> <p>CODE ID TYPE SSN U.S. Social Security Number PPN Passport Number CSI Canadian Social Insurance Number WPN Work Permit Number IND INDEX Identification Number OTH Other</p> <p>4. Check the box that denotes the sex of the individual being monitored.</p> <p>5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.</p> <p>6. Enter the monitoring period for which this report is filed. The format should be MM/DD/YY - MM/DD/YY.</p> <p>7. Enter the name of the licensee, registrant, or facility not licensed by the Agency that provided monitoring.</p> <p>8. Enter the Agency license or registration number or numbers.</p> <p>9. Place an "X" in Record, Estimate, or No Record. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee or registrant intends to assign the record dose on the basis of TLD results that are not yet available.</p>	<p>10. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned special exposures received during the monitoring period. If more than one PSE was received in a single year, the licensee should sum them and report the total of all PSEs.</p> <p>11. Enter the deep dose equivalent (DDE) to the whole body.</p> <p>12. Enter the eye dose equivalent (EDE) recorded for the lens of the eye.</p> <p>13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE, WB).</p> <p>14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE, ME).</p> <p>15. Enter the committed effective dose equivalent (CEDE).</p> <p>16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ.</p> <p>17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 16.</p> <p>18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.</p> <p>19. Signature of the monitored individual. The signature of the monitored individual on this form indicates that the information contained on the form is complete and correct to the best of his or her knowledge.</p> <p>20. Enter the date this form was signed by the monitored individual.</p> <p>21. [OPTIONAL] Enter the name of the licensee, registrant or facility not licensed by the Agency, providing monitoring for exposure to radiation (such as a DOE facility) or the employer if the individual is not employed by the licensee or registrant and the employer chooses to maintain exposure records for its employees.</p>
	<p>22. [OPTIONAL] Signature of the person designated to represent the licensee, registrant or employer entered in item 21. The licensee, registrant or employer who chooses to countersign the form should have on file documentation of all the information on the Agency Form Y being signed.</p> <p>23. [OPTIONAL] Enter the date this form was signed by the designated representative.]</p>

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PAGE _____ **OF** _____

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**INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE
COMPLETION OF TRC FORM 21-3**
(All doses should be stated in rems)

<p>1. Type or print the full name of the monitored individual in the order of last name (include "J," "Sr," "M," etc.), first name, middle initial (if applicable).</p> <p>2. Enter the individual's identification number, including punctuation. This number should be the 8-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.</p> <p>3. Enter the code for the type of identification used as shown below:</p> <p>CODE ID TYPE SSN U.S. Social Security Number PPN Passport Number CSI Canadian Social Insurance Number WPN Work Permit Number IND INDEX Identification Number OTH Other</p> <p>4. Check the box that denotes the sex of the individual being monitored.</p> <p>5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.</p> <p>6. Enter the monitoring period for which this report is filed. The format should be MM/DD/YY - MM/DD/YY.</p> <p>7. Enter the name of the licensee or registrant.</p> <p>8. Enter the Agency license or registration number or numbers.</p> <p>9A. Place an "X" in Record or Estimate. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee intends to assign the record dose on the basis of TLD results that are not yet available.</p> <p>9B. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned special exposures received during the monitoring</p>	<p>period. If more than one PSE was received in a single year, the licensee or registrant should sum them and report the total of all PSEs.</p> <p>10A. Enter the symbol for each radionuclide that resulted in an internal exposure recorded for the individual, using the format "X-###," for instance, Cs-137 or Tc-99m.</p> <p>10B. Enter the lung clearance class as listed in Appendix B to Part D (D, W, Y, V, or O for either) for all intakes by inhalation.</p> <p>10C. Enter the mode of intake. For inhalation, enter "H." For absorption through the skin, enter "G." For oral ingestion, enter "G." For injection, enter "J."</p> <p>10D. Enter the intake of each radionuclide in μCi.</p> <p>11. Enter the deep dose equivalent (DDE) to the whole body.</p> <p>12. Enter the eye dose equivalent (EDE) recorded for the lens of the eye.</p> <p>13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE, WBI).</p> <p>14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE, ME).</p> <p>15. Enter the committed effective dose equivalent (CEDE) or "NR" for "Not Required" or "NC" for "Not Calculated".</p> <p>16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ or "NR" for "Not Required" or "NC" for "Not Calculated".</p> <p>17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 15.</p> <p>18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.</p>	<p>19. COMMENTS. In the space provided, enter additional information that might be needed to determine compliance with limits. An example might be to enter the note that the SDE, ME was the result of exposure from a discrete hot particle. Another possibility would be to indicate that an overexposed report has been sent to the Agency in reference to the exposure report.</p> <p>20. Signature of the person designated to represent the licensee or registrant.</p> <p>21. Enter the date this form was prepared.</p>
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10

20. SIGNATURE -- LICENSEE OR REGISTRANT

21. DATE PREPARED

**INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE
COMPLETION OF TRC FORM 21-3**
(All doses should be stated in rems)

<p>1. Type or print the full name of the monitored individual in the order of last name (include "Jr.", "Sr.", "III," etc.), first name, middle initial (if applicable).</p> <p>2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.</p> <p>3. Enter the code for the type of identification used as shown below:</p> <p>CODE ID TYPE</p> <p>SSN U.S. Social Security Number</p> <p>PPN Passport Number</p> <p>CSI Canadian Social Insurance Number</p> <p>WPN Work Permit Number</p> <p>IND INDEX Identification Number</p> <p>OTH Other</p>	<p>period. If more than one PSE was received in a single year, the licensee or registrant should sum them and report the total of all PSEs.</p> <p>10A. Enter the symbol for each radionuclide that resulted in an internal exposure recorded for the individual, using the format "Xc-#f#x," for instance, Cs-137 or Tc-99m.</p> <p>10B. Enter the lung clearance class as listed in Appendix B to Part D (D, W, Y, V, or O for other) for all intakes by inhalation.</p> <p>10C. Enter the mode of intake. For inhalation, enter "H." For absorption through the skin, enter "B." For oral ingestion, enter "G." For injection, enter "J."</p> <p>10D. Enter the intake of each radionuclide in μCi.</p> <p>11. Enter the deep dose equivalent (DDE) to the whole body.</p> <p>12. Enter the eye dose equivalent (EDE) recorded for the lens of the eye.</p> <p>13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE,WB).</p> <p>14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE,ME).</p> <p>15. Enter the committed effective dose equivalent (CEDE) or "NR" for "Not Required" or "NC" for "Not Calculated".</p> <p>16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ or "NR" for "Not Required" or "NC" for "Not Calculated".</p> <p>17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 15.</p> <p>18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.</p>	<p>19. COMMENTS. In the space provided, enter additional information that might be needed to determine compliance with limits. An example might be to enter the note that the SDE,ME was the result of exposure from a discrete hot particle. Another possibility would be to indicate that an overexposed report has been sent to the Agency in reference to the exposure report.</p> <p>20. Signature of the person designated to represent the licensee or registrant.</p> <p>21. Enter the date this form was prepared.]</p>
<p>4. Check the box that denotes the sex of the individual being monitored.</p> <p>5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.</p> <p>6. Enter the monitoring period for which this report is filed. The format should be MM/DD/YY - MM/DD/YY.</p> <p>7. Enter the name of the licensee or registrant.</p> <p>8. Enter the Agency license or registration number or numbers.</p> <p>9A. Place an "X" in Record or Estimate. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee intends to assign the record dose on the basis of TLD results that are not yet available.</p>		
<p>9B. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned special exposures received during the monitoring</p>		

Figure 1: 25 TAC §289.252(h)(4)(A)(iii)(III)(-a-)

The receipt, possession, use, and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent and the regulations of the NRC or a state with which the NRC has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION-RADIOACTIVE MATERIAL

(Name of Manufacturer or Distributor);

Figure 3: 25 TAC §289.252(h)(8)(D)(i)

This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories, or hospitals, and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the NRC or of a state with which the NRC has entered into an agreement for the exercise of regulatory authority.

_____ ; or
Name of Manufacturer

Figure 5: 25 TAC 289.252(w)(4)

Radioactive Material*	Release Fraction	Quantity (curies)	Radioactive Material*	Release Fraction	Quantity (curies)	Radioactive Material*	Release Fraction	Quantity (curies)
Ac-228(89)	0.001	4,000	I-125(53)	0.5	10	Sn-123(50)	0.01	3,000
Am-241(95)	0.001	2	I-131(53)	0.5	10	Sn-126(50)	0.01	1,000
Am-242(95)	0.001	2	In-114m(49)	0.01	1,000	Ti-144(22)	0.01	100
Am-243(95)	0.001	2	Ir-192(77)	0.001	40,000	V-48(23)	0.01	7,000
Sb-124(51)	0.01	4,000	Fe-55(26)	0.01	40,000	Xe-133(54)	1.0	900,000
Sb-126(51)	0.01	6,000	Fe-59(26)	0.01	7,000	Y-91(39)	0.01	2,000
Ba-133(56)	0.01	10,000	Kr-85(36)	1.0	6,000,000	Zn-65(30)	0.01	5,000
Ba-140(56)	0.01	30,000	Pb-210(82)	0.01	8	Zr-93(40)	0.01	400
Bi-207(83)	0.01	5,000	Mn-56(25)	0.01	60,000	Zr-95(40)	0.01	5,000
Bi-210(83)	0.01	600	Hg-203(80)	0.01	10,000	Any other		
Cd-109(48)	0.01	1,000	Mo-99(42)	0.01	30,000	β-γ emitter	0.01	10,000
Cd-113(48)	0.01	80	Np-237(93)	0.001	2	Mixed fission		
Ca-45(20)	0.01	20,000	Ni-63(28)	0.01	20,000	products	0.01	1,000
Cf-252(98)	0.001	9(20 mg)	Nb-94(41)	0.01	300	Mixed		
C-14(6)**	0.01	50,000	P-32(15)	0.5	100	corrosion		
Co-141(58)	0.01	10,000	P-33(15)	0.5	1,000	products	0.01	10,000
Co-144(58)	0.01	300	Po-210(84)	0.01	10	Contaminated		
Cs-134(55)	0.01	2,000	K-42(19)	0.01	9,000	equipment, β-γ	0.001	10,000
Cs-137(55)	0.01	2,000	Pm-145(61)	0.01	4,000	Irradiated		
Cl-36(17)	0.5	100	Pm-147(61)	0.01	4,000	material, any		
Cr-51(24)	0.01	300,000	Ru-106(44)	0.01	200	form other		
Co-60(27)	0.001	5,000	Sm-151(62)	0.01	4,000	than solid		
Cu-64(29)	0.01	200,000	Se-46(21)	0.01	3,000	noncombustible	0.01	1,000
Cm-242(96)	0.001	60	Se-75(34)	0.01	10,000	Irradiated		
Cm-243(96)	0.001	3	Ag-110m(47)	0.01	1,000	material, solid		
Cm-244(96)	0.001	4	Na-22(11)	0.01	9,000	noncombustible	0.001	10,000
Cm-245(96)	0.001	2	Na-24(11)	0.01	10,000	Mixed		
Bu-152(63)	0.01	500	Sr-89(38)	0.01	3,000	radioactive		
Bu-154(63)	0.01	400	Sr-90(38)	0.01	90	waste, β-γ	0.01	1,000
Bu-155(63)	0.01	3,000	S-35(16)	0.5	900	Packaged		
Ge-68(32)	0.01	2,000	Tc-99(43)	0.01	10,000	waste, β-γ***	0.001	10,000
Gd-153(64)	0.01	5,000	Tc-99m(43)	0.01	400,000	Any other		
Au-198(79)	0.01	30,000	Te-127m(52)	0.01	5,000	α emitter	0.001	2
Hf-172(72)	0.01	400	Te-129m(52)	0.01	5,000	Contaminated		
Hf-181(72)	0.01	7,000	Tb-160(65)	0.01	4,000	Equipment, α	0.0001	20
Ho-166(67)	0.01	100	Tm-170(69)	0.01	4,000	Packaged		
H-3(1)	0.5	20,000	Sn-113(50)	0.01	10,000	waste, α***	0.0001	20

*For combinations of radionuclides, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radionuclide authorized to the quantity listed for that radionuclide in this paragraph exceeds one. () indicates atomic number.

**Non CO forms only.

***Waste packaged in Type B containers does not require an emergency plan.

[Radioactive Material**	<u>Release</u> Fraction	<u>Quantity</u> (curies)
Actinium-228	0.001	4,000
Americium-241	.001	2
Americium-242	.001	2
Americium-243	.001	2
Antimony-124	.01	4,000
Antimony-126	.01	6,000
Barium-133	.01	10,000
Barium-140	.01	30,000
Bismuth-207	.01	5,000
Bismuth-210	.01	600
Cadmium-109	.01	1,000
Cadmium-113	.01	80
Calcium-45	.01	20,000
Californium-252	.001	9 (20 mg)
Carbon-14	.01	50,000
	Non CO	
Cerium-141	.01	10,000
Cerium-144	.01	300
Cesium-134	.01	2,000
Cesium-137	.01	2,000
Chlorine-36	.5	100
Chromium-51	.01	300,000
Cobalt-60	.001	5,000
Copper-64	.01	200,000
Curium-242	.001	60
Curium-243	.001	3
Curium-244	.001	4
Curium-245	.001	2
Europium-152	.01	500
Europium-154	.01	400
Europium-155	.01	3,000
Germanium-68	.01	2,000
Gadolinium-153	.01	5,000
Gold-198	.01	30,000
Hafnium-172	.01	400
Hafnium-181	.01	7,000
Holmium-166m	.01	100
Hydrogen-3	.5	20,000
Iodine-125	.5	10

Iodine-131	.5	10
Indium-114m	.01	1,000
Iridium-192	.001	40,000
Iron-55	.01	40,000
Iron-59	.01	7,000
Krypton-85	1.0	6,000,000
Lead-210 .01 8		
Manganese-56	.01	60,000
Mercury-203	.01	10,000
Molybdenum-99	.01	30,000
Neptunium-237	.001	2
Nickel-63	.01	20,000
Niobium-94	.01	300
Phosphorus-32	.5	100
Phosphorus-33	.5	1,000
Polonium-210	.01	10
Potassium-42	.01	9,000
Promethium-145	.01	4,000
Promethium-147	.01	4,000
Ruthenium-106	.01	200
Samarium-151	.01	4,000
Scandium-46	.01	3,000
Selenium-75	.01	10,000
Silver-110m	.01	1,000
Sodium-22	.01	9,000
Sodium-24	.01	10,000
Strontium-89	.01	3,000
Strontium-90	.01	90
Sulfur-35	.5	900
Technitium-99	.01	10,000
Technitium-99m	.01	400,000
Tellurium-127m	.01	5,000
Tellurium-129m	.01	5,000
Terbium-160	.01	4,000
Thulium-170	.01	4,000
Tin-113	.01	10,000
Tin-123	.01	3,000
Tin-126	.01	1,000
Titanium-44	.01	100
Vanadium-48	.01	7,000
Xenon-133	1.0	900,000
Yttrium-91	.01	2,000
Zinc-65	.01	5,000
Zirconium-93	.01	400

[Figure 5: 25 TAC §289.252(w)(4)] Page 3 of 3

Zirconium-95	.01	5,000
Any other beta-gamma emitter	.01	10,000
Mixed fission products	.01	1,000
Mixed corrosion products	.01	10,000
Contaminated equipment beta-gamma	.001	10,000
Irradiated material, any form other than solid noncombustible	.01	1,000
Irradiated material, solid noncombustible	.001	10,000
Mixed radioactive waste, beta-gamma	.01	1,000
Packaged mixed waste, beta-gamma*	.001	10,000
Any other alpha emitter	.001	2
Contaminated equipment, alpha	.0001	20
Packaged waste, alpha*	.0001	20
Combinations of radioactive materials listed above**	-----	-----

* Waste packaged in Type B containers does not require an emergency plan.

** For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in this paragraph exceeds one.]

[Figure 1: 25 TAC §289.254(b)(20)(B)]

[RADIOACTIVE HALF-LIFE			
Radionuclide	0 to 1000 days	1000 days to 10 ⁶ years	Over 10 ⁶ years
Atomic No. 1-81	Group III	Group II	Group III
Atomic No. 82 and over	Group I	Group I	Group III

Figure 1: 25 TAC §289.254(d)(1)

	<u>Category I</u>	<u>Category II</u>	<u>Category III</u>	<u>Category IV</u>
Class I Storage or Processing Facility	10 mCi	100 mCi	1 Ci	10 Ci
Class II Storage Facility	2 Ci	20 Ci	200 Ci	2000 Ci
Class II Processing Facility	1 Ci	10 Ci	100 Ci	1000 Ci

[Figure 2: 25 TAC §289.254(d)(1)]

	<u>Group I</u>	<u>Group II</u>	<u>Group III</u>	<u>Group IV</u>
Class A Storage or Processing Facility	10 mCi	100 mCi	1 Ci	10 Ci
Class B Storage Facility	2 Ci	20 Ci	200 Ci	2000 Ci
Class B Processing Facility	1 Ci	10 Ci	100 Ci	1000 Ci]

Figure 2: 25 TAC §289.254(x)(1) Page 1 of 7

Element*	Radionuclide**	Group
Actinium (89)	Ac-227	I
	Ac-228	I
Americium (95)	Am-241	I
	Am-243	I
Antimony (51)	Sb-122	IV
	Sb-124	III
	Sb-125	III
Argon (18)	Ar-37	VI
	Ar-41	II
	Ar-41 (uncompressed)***	V
Arsenic (33)	As-73	IV
	As-74	I
	As-76	IV
	As-77	IV
Astatine (85)	At-211	III
Barium (56)	Ba-131	IV
	Ba-133	II
	Ba-140	III
Berkelium (97)	Bk-249	I
Beryllium (4)	Be-7	IV
Bismuth (83)	Bi-206	IV
	Bi-207	III
	Bi-210	II
	Bi-212	III
Bromine (35)	Br-82	IV
Cadmium (48)	Cd-109	IV
	Cd-115m	III
	Cd-115	IV
Calcium (20)	Ca-45	IV
	Ca-47	IV
Californium (98)	Cf-249	I
	Cf-250	I
	Cf-252	I
Carbon (6)	C-14	IV
Cerium (58)	Ce-141	IV
	Ce-143	IV
	Ce-144	III
Cesium (55)	Cs-131	IV
	Cs-134	II

Figure 2: 25 TAC §289.254(x)(1) Page 2 of 7

	Cs-134	III
	Cs-135	IV
	Cs-136	IV
	Cs-137	III
Chlorine (17)	Cl-36	III
	Cl-38	IV
Chromium (24)	Cr-51	IV
Cobalt (27)	Co-56	III
	Co-57	IV
	Co-58m	IV
	Co-58	IV
	Co-60	III
Copper (29)	Cu-64	IV
Curium (96)	Cm-242	I
	Cm-243	I
	Cm-244	I
	Cm-245	I
	Cm-246	I
Dysprosium (66)	Dy-154	III
	Dy-165	IV
	Dy-166	IV
Erbium (68)	Er-169	IV
	Er-171	IV
Europium (63)	Eu-150	III
	Eu-152m	IV
	Eu-152	III
	Eu-154	II
	Eu-155	IV
Fluorine (9)	F-18	IV
Gadolinium (64)	Gd-153	IV
	Gd-159	IV
Gallium (31)	Ga-67	III
	Ga-72	IV
Germanium (32)	Ge-71	IV
Gold (79)	Au-193	III
	Au-194	III
	Au-195	III
	Au-196	IV
	Au-198	IV
	Au-199	IV
Hafnium (72)	Hf-181	IV
Holmium (67)	Ho-166	IV
Hydrogen (1)	H-3 (see tritium)	

Indium (49)	In-113m	IV
	In-114m	III
	In-115m	IV
	In-115	IV
Iodine (53)	I-124	III
	I-125	III
	I-126	III
	I-129	III
	I-131	III
	I-132	IV
	I-133	III
	I-134	IV
	I-135	IV
	Ir-190	IV
Iridium (77)	Ir-192	III
	Ir-194	IV
	Fe-55	IV
Iron (26)	Fe-59	IV
	Kr-85m	III
Krypton (36)	Kr-85m (uncompressed)***	V
	Kr-85	III
	Kr-85 (uncompressed)***	VI
	Kr-87	II
	Kr-87 (uncompressed)***	V
	La-140	IV
Lanthanum (57)	Pb-203	IV
Lead (82)	Pb-210	II
	Pb-212	II
	Lu-172	III
Lutetium (71)	Lu-177	IV
	Mg-28	III
Magnesium (12)	Mn-52	IV
Manganese (25)	Mn-54	IV
	Mn-56	IV
	Hg-197m	IV
Mercury (80)	Hg-197IV	
	Hg-203	IV
		II
Mixed fission products (MFP)	Mo-99	IV
Molybdenum (42)	Nd-147	IV
Neodymium (60)	Nd-149	IV
	Np-237	I
Neptunium (93)	Np-239	I

Figure 2: 25 TAC §289.254(x)(1) Page 4 of 7

Nickel (28)	Ni-56	III
	Ni-59	IV
	Ni-63	IV
	Ni-65	IV
Niobium (41)	Nb-93m	IV
	Nb-95	IV
	Nb-97	IV
Osmium (76)	Os-185	IV
	Os-191m	IV
	Os-191	IV
	Os-193	IV
Palladium (46)	Pd-103	IV
	Pd-109	IV
Phosphorus (15)	P-32	IV
Platinum (73)	Pt-191	IV
	Pt-193	IV
	Pt-193m	IV
	Pt-197m	IV
	Pt-197	IV
Plutonium (94)	Pu-238****	I
	Pu-239****	I
	Pu-240	I
	Pu-241****	I
	Pu-242	I
	Po-210	I
Polonium (84)		
Potassium (19)	K-42	IV
	K-43	III
Praseodymium (59)	Pr-142	IV
	Pr-143	IV
Promethium (61)	Pm-147	IV
	Pm-149	IV
Protactinium (91)	Pa-230	I
	Pa-231	I
	Pa-233	II
Radium (88)	Ra-223	II
	Ra-224	II
	Ra-226	I
	Ra-228	I
	Rn-220	IV
Radon (86)	Rn-222	II
Rhenium (75)	Re-183	IV
	Re-186	IV
	Re-187	IV
	Re-188	IV

	Re-Natural	IV
Rhodium (45)	Rh-103m	IV
	Rh-105	IV
	Rb-86	IV
Rubidium (37)	Rb-87	IV
	Rb-Natural	IV
	Ru-97	IV
Ruthenium (44)	Ru-103	IV
	Ru-105	IV
	Ru-106	III
	Sm-145	III
Samarium (62)	Sm-147	III
	Sm-151	IV
	Sm-153	IV
	Sc-46	III
Scandium (21)	Sc-47	IV
	Sc-48	IV
	Se-75	IV
Selenium (34)	Si-31	IV
Silicon (14)	Ag-105	IV
Silver (47)	Ag-110m	III
	Ag-111	IV
	Na-22	III
Sodium (11)	Na-24	IV
Strontium (38)	Sr-85m	IV
	Sr-85	IV
	Sr-89	III
	Sr-90	II
	Sr-91	III
	Sr-92	IV
	S-35	IV
	Ta-182	III
Technetium (43)	Tc-96m	IV
	Tc-96	IV
	Tc-97m	IV
	Tc-97	IV
	Tc-99m	IV
	Tc-99	IV
	Te-125m	IV
Tellurium (52)	Te-127m	IV
	Te-127	IV
	Te-129m	III
	Te-129	IV
	Te-131m	III

Figure 2: 25 TAC §289.254(x)(1) Page 6 of 7

	Te-132	IV
Terbium (65)	Tb-160	III
Thallium (81)	Tl-200	IV
	Tl-201	IV
	Tl-202	IV
	Tl-204	III
Thorium (90)	Th-227	II
	Th-228	I
	Th-230	I
	Th-231	I
	Th-232	III
	Th-234	II
	Th-Natural	III
Thulium (69)	Tm-168	III
	Tm-170	III
	Tm-171	IV
Tin (50)	Sn-113	IV
	Sn-117m	III
	Sn-121	III
	Sn-125	IV
Tritium (1)	H-3	IV
	H-3 (as a gas, as luminous paint, or adsorbed on solid material.)	VII
Tungsten (74)	W-181	IV
	W-185	IV
	W-187	IV
Uranium (92)	U-230	II
	U-232	I
	U-233****	II
	U-234	II
	U-235****	III
	U-236	II
	U-238	III
	U-Natural	III
	U-Enriched****	III
	U-Depleted	III
Vanadium (23)	V-48	IV
	V-49	III
Xenon (54)	Xe-125	III
	Xe-131m	III
	Xe-131m (uncompressed)***	V
	Xe-133	III
	Xe-133 (uncompressed)***	VI

Figure 2: 25 TAC §289.254(x)(1) Page 7 of 7

	Xe-135	II
	Xe-135 (uncompressed)***	V
Ytterbium (70)	Yb-175	IV
Yttrium (39)	Y-88	III
	Y-90	IV
	Y-91m	III
	Y-91	III
	Y-92	IV
	Y-93	IV
Zinc (30)	Zn-65	IV
	Zn-69m	IV
	Zn-69	IV
Zirconium (40)	Zr-93	IV
	Zr-95	III
	Zr-97	IV

NOTE: For mixtures of radionuclides and for radionuclides not included in this subsection, see subsection(b) of this section, waste processing and storage categories.

* Atomic number shown in parentheses.

** Atomic mass number shown after the element symbol.

*** Uncompressed means at a pressure not exceeding 1 atmosphere.

**** Fissile material.

m Metastable state.

Figure 3: 25 TAC §289.254(x)(2)

RADIOACTIVE HALF-LIFE			
Radionuclide	0 to 1000 days	1000 days to 10 ⁶ years	Over 10 ⁶ years
Atomic No. 1-81	Category III	Category II	Category III
Atomic No. 82 and over	Category I	Category I	Category III

Figure 2: 25 TAC §289.257(s)(1)(D)(ii)

$$\sum_i \frac{B(i)}{A_2(i)} \leq 1$$

where B(i) is the activity of radionuclide i and A₁(i) and A₂(i) are the A₁ and A₂ values for radionuclide i, respectively.

Figure 1: 25 TAC §289.257(s)(1)(D)(i)

$$\sum_i \frac{B(i)}{A_1(i)} \leq 1$$

Figure 3: 25 TAC §289.257(s)(1)(D)(iii)

$$A_1 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_1(i)}}$$

where $f(i)$ is the fraction of activity of nuclide i in the mixture and $A_1(i)$ is the appropriate A_1 value for nuclide i .

Figure 4: 25 TAC §289.257(s)(1)(D)(iv)

$$A_2 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_2(i)}}$$

where $f(i)$ is the fraction of activity of nuclide i in the mixture and $A_2(i)$ is the appropriate A_2 value for nuclide i .

Symbol of Radionuclide	Element and Atomic Number	A ₁ (TBq)	A ₁ (Ci)	A ₂ (TBq)	A ₂ (Ci)	Specific Activity (TBq/g)	(Ci/g)
Ac-225	Actinium(89)	0.6	16.2	1x10 ⁻²	0.270	2.1x10 ³	5.8x10 ⁴
Ac-227		40	1080	2x10 ⁻⁵	5.41x10 ⁻⁴	2.7	7.2x10 ¹
Ac-228		0.6	16.2	0.4	10.8	8.4x10 ⁴	2.2x10 ⁶
Ag-105	Silver(47)	2	54.1	2	54.1	1.1x10 ³	3.0x10 ⁴
Ag-108m		0.6	16.2	0.6	16.2	9.7x10 ⁻¹	2.6x10 ¹
Ag-110m		0.4	10.8	0.4	10.8	1.8x10 ²	4.7x10 ³
Ag-111		0.6	16.2	0.5	13.5	5.8x10 ³	1.6x10 ⁵
Al-26	Aluminum(13)	0.4	10.8	0.4	10.8	7.0x10 ⁻⁴	1.9x10 ⁻²
Am-241	Americium(95)	2	54.1	2x10 ⁻⁴	5.41x10 ⁻³	1.3x10 ⁻¹	3.4
Am-242m		2	54.1	2x10 ⁻⁴	5.41x10 ⁻³	3.6x10 ⁻¹	1.0x10 ¹
Am-243		2	54.1	2x10 ⁻⁴	5.41x10 ⁻³	7.4x10 ⁻³	2.0x10 ⁻¹
Ar-37	Argon(18)	40	1080	40	1080	3.7x10 ³	9.9x10 ⁴
Ar-39		20	541	20	541	1.3	3.4x10 ¹
Ar-41		0.6	16.2	0.6	16.2	1.5x10 ⁶	4.2x10 ⁷
Ar-42		0.2	5.41	0.2	5.41	9.6	2.6x10 ²
As-72	Arsenic(33)	0.2	5.41	0.2	5.41	6.2x10 ⁴	1.7x10 ⁶
As-73		40	1080	40	1080	8.2x10 ²	2.2x10 ⁴
As-74		1	27.0	0.5	13.5	3.7x10 ³	9.9x10 ⁴
As-76		0.2	5.41	0.2	5.41	5.8x10 ⁴	1.6x10 ⁶
As-77		20	541	0.5	13.5	3.9x10 ⁴	1.0x10 ⁶
At-211	Astatine(85)	30	811	2	54.1	7.6x10 ⁴	2.1x10 ⁶
Au-193	Gold(79)	6	162	6	162	3.4x10 ⁴	9.2x10 ⁵
Au-194		1	27.0	1	27.0	1.5x10 ⁴	4.1x10 ⁵
Au-195		10	270	10	270	1.4x10 ²	3.7x10 ³
Au-196		2	54.1	2	54.1	4.0x10 ³	1.1x10 ⁵
Au-198		3	81.1	0.5	13.5	9.0x10 ³	2.4x10 ⁵
Au-199		10	270	0.9	24.3	7.7x10 ³	2.1x10 ⁵
Ba-131	Barium(56)	2	54.1	2	54.1	3.1x10 ³	8.4x10 ⁴

Figure 5: 25 TAC §289.257(s)(2)

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Symbol of Radionuclide	Element and Atomic Number	A ₁ (TBq)	A ₁ (Ci)	A ₂ (TBq)	A ₂ (Ci)	Specific Activity (TBq/g)	(Ci/g)
Ba-133m		10	270	0.9	24.3	2.2x10 ⁴	6.1x10 ⁵
Ba-133		3	81.1	3	81.1	9.4	2.6x10 ²
Ba-140		0.4	10.8	0.4	10.8	2.7x10 ³	7.3x10 ⁴
Be-7	Beryllium(4)	20	541	20	541	1.3x10 ⁴	3.5x10 ⁵
Be-10		20	541	0.5	13.5	8.3x10 ⁻⁴	2.2x10 ⁻²
Bi-205	Bismuth(83)	0.6	16.2	0.6	16.2	1.5x10 ³	4.2x10 ⁴
Bi-206		0.3	8.11	0.3	8.11	3.8x10 ³	1.0x10 ⁵
Bi-207		0.7	18.9	0.7	18.9	1.9	5.2x10 ¹
Bi-210m		0.3	8.11	3x10 ⁻²	0.811	2.1x10 ⁻⁵	5.7x10 ⁻⁴
Bi-210		0.6	16.2	0.5	13.5	4.6x10 ³	1.2x10 ⁵
Bi-212		0.3	8.11	0.3	8.11	5.4x10 ⁵	1.5x10 ⁷
Bk-247	Berkelium(97)	2	54.1	2x10 ⁻⁴	5.41x10 ⁻³	3.8x10 ⁻²	1.0
Bk-249		40	1080	8x10 ⁻²	2.16	6.1x10 ¹	1.6x10 ³
Br-76	Bromine(35)	0.3	8.11	0.3	8.11	9.4x10 ⁴	2.5x10 ⁵
Br-77		3	81.1	3	81.1	2.6x10 ⁴	7.1x10 ⁵
Br-82		0.4	10.8	0.4	10.8	4.0x10 ⁴	1.1x10 ⁶
C-11	Carbon(6)	1	27	0.5	13.5	3.1x10 ⁷	8.4x10 ⁸
C-14		40	1080	2	54.1	1.6x10 ⁻¹	4.5
Ca-41	Calcium(20)	40	1080	40	1080	3.1x10 ⁻³	8.5x10 ⁻²
Ca-45		40	1080	0.9	24.3	6.6x10 ²	1.8x10 ⁴
Ca-47		0.9	24.3	0.5	13.5	2.3x10 ⁴	6.1x10 ⁵
Cd-109	Cadmium(48)	40	1080	1	27.0	9.6x10 ¹	2.6x10 ³
Cd-113m		20	541	9x10 ⁻²	2.43	8.3	2.2x10 ²
Cd-115m		0.3	8.11	0.3	8.11	9.4x10 ²	2.5x10 ⁴
Cd-115		4	108	0.5	13.5	1.9x10 ⁴	5.1x10 ⁵
Ce-139		6	162	6	162	2.5x10 ²	6.8x10 ³
Ce-141	Cerium(58)	10	270	0.5	13.5	1.1x10 ³	2.8x10 ⁴

Figure 5: 25 TAC §289.257(s)(2)

Symbol of Radionuclide	Element and Atomic Number	A ₁ (TBq)	A ₁ (Ci)	A ₂ (TBq)	A ₂ (Ci)	Specific Activity (TBq/g)	(Ci/g)
Ce-143	Californium(98)	0.6	16.2	0.5	13.5	2.5x10 ⁴	6.6x10 ⁵
Ce-144		0.2	5.41	0.2	5.41	1.2x10 ²	3.2x10 ³
Cf-248		30	811	3x10 ⁻³	8.11x10 ⁻²	5.8x10 ¹	1.6x10 ³
Cf-249		2	54.1	2x10 ⁻⁴	5.41x10 ⁻³	1.5x10 ⁻¹	4.1
Cf-250		5	135	5x10 ⁻⁴	1.35x10 ⁻²	4.0	1.1x10 ²
Cf-251		2	54.1	2x10 ⁻⁴	5.41x10 ⁻³	5.9x10 ⁻²	1.6
Cf-252		0.1	2.70	1x10 ⁻³	2.70x10 ⁻²	2.0x10 ¹	5.4x10 ²
Cf-253		40	1080	6x10 ⁻²	1.62	1.1x10 ³	2.9x10 ⁴
Cf-254		3x10 ⁻³	8.11x10 ⁻²	6x10 ⁻⁴	1.62x10 ⁻²	3.1x10 ²	8.5x10 ³
Cl-36	Chlorine(17)	20	541	0.5	13.5	1.2x10 ³	3.3x10 ²
Cl-38	Curium(96)	0.2	5.41	0.2	5.41	4.9x10 ⁶	1.3x10 ⁸
Cm-240		40	1080	2x10 ⁻²	0.541	7.5x10 ²	2.0x10 ⁴
Cm-241		2	54.1	0.9	24.3	6.1x10 ²	1.7x10 ⁴
Cm-242		40	1080	1x10 ⁻²	0.270	1.2x10 ²	3.3x10 ³
Cm-243		3	81.1	3x10 ⁻⁴	8.11x10 ⁻³	1.9	5.2x10 ¹
Cm-244		4	108	4x10 ⁻⁴	1.08x10 ⁻²	3.0	8.1x10 ⁵
Cm-245		2	54.1	2x10 ⁻⁴	5.41x10 ⁻³	6.4x10 ⁻³	1.7x10 ⁻¹
Cm-246		2	54.1	2x10 ⁻⁴	5.41x10 ⁻³	1.1x10 ⁻²	3.1x10 ⁻¹
Cm-247		2	54.1	2x10 ⁻⁴	5.41x10 ⁻³	3.4x10 ⁻⁶	9.3x10 ⁻⁵
Cm-248		4x10 ⁻²	1.08	5x10 ⁻⁵	1.35x10 ⁻³	1.6x10 ⁻⁴	4.2x10 ⁻³
Co-55	Cobalt(27)	0.5	13.5	0.5	13.5	1.1x10 ⁵	3.1x10 ⁶
Co-56		0.3	8.11	0.3	8.11	1.1x10 ³	3.0x10 ⁴
Co-57		8	216	8	216	3.1x10 ²	8.4x10 ³
Co-58m		40	1080	40	1080	2.2x10 ⁵	5.9x10 ⁶
Co-58		1	27.0	1	27.0	1.2x10 ³	3.2x10 ⁴
Co-60	Chromium(24)	0.4	10.8	0.4	10.8	4.2x10 ¹	1.1x10 ³
Cr-51		30	811	30	811	3.4x10 ³	9.2x10 ⁴

Symbol of Radionuclide	Element and Atomic Number	A ₁ (TBq)	A ₁ (Ci)	A ₂ (TBq)	A ₂ (Ci)	Specific Activity (TBq/g)	(Ci/g)
Cs-129	Cesium(55)	4	108	4	108	2.8x10 ⁴	7.6x10 ⁵
Cs-131		40	1080	40	1080	3.8x10 ³	1.0x10 ⁵
Cs-132		1	27.0	1	27.0	5.7x10 ³	1.5x10 ⁵
Cs-134m		40	1080	9	243	3.0x10 ⁵	8.0x10 ⁶
Cs-134		0.6	16.2	0.5	13.5	4.8x10 ¹	1.3x10 ³
Cs-135	Copper(29)	40	1080	0.9	24.3	4.3x10 ⁻⁵	1.2x10 ⁻³
Cs-136		0.5	13.5	0.5	13.5	2.7x10 ³	7.3x10 ⁴
Cs-137		2	54.1	0.5	13.5	3.2	8.7x10 ¹
Cu-64		5	135	0.9	24.3	1.4x10 ⁵	3.9x10 ⁶
Cu-67		9	243	0.9	24.3	2.8x10 ⁴	7.6x10 ⁵
Dy-159	Dysprosium(66)	20	541	20	541	2.1x10 ²	5.7x10 ³
Dy-165		0.6	16.2	0.5	13.5	3.0x10 ⁵	8.2x10 ⁶
Dy-166		0.3	8.11	0.3	8.11	8.6x10 ³	2.3x10 ⁵
Er-169	Erbium(68)	40	1080	0.9	24.3	3.1x10 ³	8.3x10 ⁴
Er-171		0.6	16.2	0.5	13.5	9.0x10 ⁴	2.4x10 ⁶
Bs-253	Einsteinium(99)*	200	5400	2x10 ⁻²	5.41x10 ⁻¹	--	--
Bs-254		30	811	3x10 ⁻³	8.11x10 ⁻²	--	--
Bs-254m		0.6	16.2	0.4	10.8	--	--
Bs-255		--	--	--	--	--	--
Bu-147		2	54.1	2	54.1	1.4x10 ³	3.7x10 ⁴
Bu-148	Europium(63)	0.5	13.5	0.5	13.5	6.0x10 ²	1.6x10 ⁴
Bu-149		20	541	20	541	3.5x10 ²	9.4x10 ³
Bu-150		0.7	18.9	0.7	18.9	6.1x10 ⁴	1.6x10 ⁶
Bu-152m		0.6	16.2	0.5	13.5	8.2x10 ⁴	2.2x10 ⁶
Bu-152		0.9	24.3	0.9	24.3	6.5	1.8x10 ²
Bu-154		0.8	21.6	0.5	13.5	9.8	2.6x10 ²

* International shipments of Einsteinium require multilateral approval of A₁ and A₂ values.

Symbol of Radionuclide	Element and Atomic Number	A ₁ (TBq)	A ₁ (Ci)	A ₂ (TBq)	A ₂ (Ci)	Specific Activity (TBq/g)	(Ci/g)
Bu-155	Fluorine(9) Iron(26)	20	541	2	54.1	1.8x10 ¹	4.9x10 ²
Bu-156		0.6	16.2	0.5	13.5	2.0x10 ³	5.5x10 ⁴
F-18		1	27.0	0.5	13.5	3.5x10 ⁶	9.5x10 ⁷
Fe-52		0.2	5.41	0.2	5.41	2.7x10 ⁵	7.3x10 ⁶
Fe-55	Fermium(100)*	40	1080	40	1080	8.8x10 ¹	2.4x10 ³
Fe-59		0.8	21.6	0.8	21.6	1.8x10 ³	5.0x10 ⁴
Fe-60		40	1080	0.2	5.41	7.4x10 ⁴	2.0x10 ²
Fm-255		40	1080	0.8	21.6	--	--
Fm-257	Gallium(31)	10	270	8x10 ⁻³	2.16x10 ⁻¹	--	--
Ga-67		6	162	6	162	2.2x10 ⁴	6.0x10 ⁵
Ga-68		0.3	8.11	0.3	8.11	1.5x10 ⁶	4.1x10 ⁷
Ga-72		0.4	10.8	0.4	10.8	1.1x10 ⁵	3.1x10 ⁶
Gd-146	Gadolinium(64)	0.4	10.8	0.4	10.8	6.9x10 ²	1.9x10 ⁴
Gd-148		3	81.1	3x10 ⁻⁴	8.11x10 ⁻³	1.2	3.2x10 ¹
Gd-153		10	270	5	135	1.3x10 ²	3.5x10 ³
Gd-159		4	108	0.5	13.5	3.9x10 ⁴	1.1x10 ⁶
Ge-68	Germanium(32)	0.3	8.11	0.3	8.11	2.6x10 ²	7.1x10 ³
Ge-71		40	1080	40	1080	5.8x10 ³	1.6x10 ⁵
Ge-77		0.3	8.11	0.3	8.11	1.3x10 ⁵	3.6x10 ⁶
H-3		See T-Tritium					
Hf-172	Hafnium(72)	0.5	13.5	0.3	8.11	4.1x10 ¹	1.1x10 ³
Hf-175		3	81.1	3	81.1	3.9x10 ²	1.1x10 ⁴
Hf-181		2	54.1	0.9	24.3	6.3x10 ²	1.7x10 ⁴
Hf-182		4	108	3x10 ⁻²	0.811	8.1x10 ⁻⁶	2.2x10 ⁻⁴
Hg-194	Mercury(80)	1	27.0	1	27.0	1.3x10 ⁻¹	3.5
Hg-195m		5	135	5	135	1.5x10 ⁴	4.0x10 ⁵

* International shipments of Fermium require multilateral approval of A₁ and A₂ values.

Symbol of Radionuclide	Element and Atomic Number	A ₁ (TBq)	A ₁ (Ci)	A ₂ (TBq)	A ₂ (Ci)	Specific Activity (TBq/g)	(Ci/g)
Hg-197m		10	270	0.9	24.3	2.5x10 ⁴	6.7x10 ⁵
Hg-197		10	270	10	270	9.2x10 ³	2.5x10 ⁵
Hg-203		4	108	0.9	24.3	5.1x10 ²	1.4x10 ⁴
Ho-163	Holmium(67)	40	1080	40	1080	2.7	7.6x10 ¹
Ho-166m		0.6	16.2	0.3	8.11	6.6x10 ⁻²	1.8
Ho-166		0.3	8.11	0.3	8.11	2.6x10 ⁴	7.0x10 ⁵
I-123	Iodine(53)	6	162	6	162	7.1x10 ⁴	1.9x10 ⁶
I-124		0.9	24.3	0.9	24.3	9.3x10 ³	2.5x10 ⁵
I-125		20	541	2	54.1	6.4x10 ²	1.7x10 ⁴
I-126		2	54.1	0.9	24.3	2.9x10 ³	8.0x10 ⁴
I-129		Unlimited	Unlimited	Unlimited	Unlimited	6.5x10 ⁻⁶	1.8x10 ⁻⁴
I-131		3	81.1	0.5	13.5	4.6x10 ³	1.2x10 ⁵
I-132		0.4	10.8	0.4	10.8	3.8x10 ⁵	1.0x10 ⁷
I-133		0.6	16.2	0.5	13.5	4.2x10 ⁴	1.1x10 ⁶
I-134		0.3	8.11	0.3	8.11	9.9x10 ⁵	2.7x10 ⁷
I-135		0.6	16.2	0.5	13.5	1.3x10 ⁵	3.5x10 ⁶
In-111	Indium(49)	2	54.1	2	54.1	1.5x10 ⁴	4.2x10 ⁵
In-113m		4	108	4	108	6.2x10 ⁵	1.7x10 ⁷
In-114m		0.3	8.11	0.3	8.11	8.6x10 ²	2.3x10 ⁴
In-115m		6	162	0.9	24.3	2.2x10 ⁵	6.1x10 ⁶
Ir-189	Iridium(77)	10	270	10	270	1.9x10 ³	5.2x10 ⁴
Ir-190		0.7	18.9	0.7	18.9	2.3x10 ³	6.2x10 ⁴
Ir-192		1	27.0	0.5	13.5	3.4x10 ²	9.2x10 ³
Ir-193m		10	270	10	270	2.4x10 ³	6.4x10 ⁴
Ir-194		0.2	5.41	0.2	5.41	3.1x10 ⁴	8.4x10 ⁵
K-40	Potassium(19)	0.6	16.2	0.6	16.2	2.4x10 ⁻⁷	6.4x10 ⁻⁶
K-42		0.2	5.41	0.2	5.41	2.2x10 ⁵	6.0x10 ⁶
K-43		1.0	27.0	0.5	13.5	1.2x10 ⁵	3.3x10 ⁶

Symbol of Radionuclide	Element and Atomic Number	A ₁ (TBq)	A ₁ (Ci)	A ₂ (TBq)	A ₂ (Ci)	Specific Activity (TBq/g)	(Ci/g)
Kr-81	Krypton(36)	40	1080	40	1080	7.8x10 ⁻⁴	2.1x10 ⁻²
Kr-85m		6	162	6	162	3.0x10 ⁵	8.2x10 ⁶
Kr-85		20	541	10	270	1.5x10 ¹	3.9x10 ²
Kr-87		0.2	5.41	0.2	5.41	1.0x10 ⁶	2.8x10 ⁷
La-137	Lanthanum(57)	40	1080	2	54.1	1.6x10 ⁻³	4.4x10 ⁻²
La-140		0.4	10.8	0.4	10.8	2.1x10 ⁴	5.6x10 ⁵
Lu-172	Lutetium(71)	0.5	13.5	0.5	13.5	4.2x10 ³	1.1x10 ⁵
Lu-173		8	216	8	216	5.6x10 ¹	1.5x10 ³
Lu-174m		20	541	8	216	2.0x10 ²	5.3x10 ³
Lu-174		8	216	4	108	2.3x10 ¹	6.2x10 ²
Lu-177		30	811	0.9	24.3	4.1x10 ³	1.1x10 ⁵
For mixed fission products, use formula for mixtures or subsection (s)(3) of this section.							
MFP							
Mg-28	Magnesium(12)	0.2	5.41	0.2	5.41	2.0x10 ⁵	5.4x10 ⁶
Mn-52	Manganese(25)	0.3	8.11	0.3	8.11	1.6x10 ⁴	4.4x10 ⁵
Mn-53		Unlimited	Unlimited	Unlimited	Unlimited	6.8x10 ⁻³	1.8x10 ⁻³
Mn-54		1	27.0	1	27.0	2.9x10 ²	7.7x10 ³
Mn-56		0.2	5.41	0.2	5.41	8.0x10 ⁵	2.2x10 ⁷
Mo-93	Molybdenum(42)	40	1080	7	189	4.1x10 ⁻²	1.1
Mo-99		0.6	16.2	0.5	13.5*	1.8x10 ⁴	4.8x10 ⁵
N-13	Nitrogen(7)	0.6	16.2	0.5	13.5	5.4x10 ⁷	1.5x10 ⁹
Na-22	Sodium(11)	0.5	13.5	0.5	13.5	2.3x10 ²	6.3x10 ³
Na-24		0.2	5.41	0.2	5.41	3.2x10 ⁵	8.7x10 ⁶
Nb-92m	Niobium(41)	0.7	18.9	0.7	18.9	5.2x10 ³	1.4x10 ⁵
Nb-93m		40	1080	6	162	8.8	2.4x10 ²
Nb-94		0.6	16.2	0.6	16.2	6.9x10 ⁻³	1.9x10 ⁻¹
Nb-95		1	27.0	1	27.0	1.5x10 ³	3.9x10 ⁴

* 20 Ci for Mo⁹⁹ for domestic use.

Figure 5: 25 TAC §289.257(g)(2)

Symbol of Radionuclide	Element and Atomic Number	A ₁ (TBq)	A ₁ (Ci)	A ₂ (TBq)	A ₂ (Ci)	Specific Activity (TBq/g)	(Ci/g)
Nb-97		0.6	16.2	0.5	13.5	9.9x10 ⁵	2.7x10 ⁷
Nd-147	Neodymium(60)	4	108	0.5	13.5	3.0x10 ³	8.1x10 ⁴
Nd-149		0.6	16.2	0.5	13.5	4.5x10 ⁵	1.2x10 ⁷
Ni-59	Nickel(28)	40	1080	40	1080	3.0x10 ⁻³	8.0x10 ⁻²
Ni-63		40	1080	30	811	2.1	5.7x10 ¹
Ni-65		0.3	8.11	0.3	8.11	7.1x10 ⁵	1.9x10 ⁷
Np-235	Neptunium(93)	40	1080	40	1080	5.2x10 ¹	1.4x10 ³
Np-236		7	189	1x10 ⁻³	2.70x10 ⁻²	4.7x10 ⁻⁴	1.3x10 ⁻²
Np-237		2	54.1	2x10 ⁻⁴	5.41x10 ⁻³	2.6x10 ⁻⁵	7.1x10 ⁻⁴
Np-239		6	162	0.5	13.5	8.6x10 ³	2.3x10 ⁵
Os-185	Osmium(76)	1	27.0	1	27.0	2.8x10 ²	7.5x10 ³
Os-191m		40	1080	40	1080	4.6x10 ⁴	1.3x10 ⁶
Os-191		10	270	0.9	24.3	1.6x10 ³	4.4x10 ⁴
Os-193		0.6	16.2	0.5	13.5	2.0x10 ⁴	5.3x10 ⁵
Os-194		0.2	5.41	0.2	5.41	1.1x10 ¹	3.1x10 ²
P-32	Phosphorus(15)	0.3	8.11	0.3	8.11	1.1x10 ⁴	2.9x10 ⁵
P-33		40	1080	0.9	24.3	5.8x10 ³	1.6x10 ⁵
Pa-230	Protactinium(91)	2	54.1	0.1	2.70	1.2x10 ³	3.3x10 ⁴
Pa-231		0.6	16.2	6x10 ⁻⁵	1.62x10 ⁻³	1.7x10 ⁻³	4.7x10 ⁻²
Pa-233		5	135	0.9	24.3	7.7x10 ²	2.1x10 ⁴
Pb-201	Lead(82)	1	27.0	1	27.0	6.2x10 ⁴	1.7x10 ⁶
Pb-202		40	1080	2	54.1	1.2x10 ⁴	3.4x10 ³
Pb-203		3	81.1	3	81.1	1.1x10 ⁴	3.0x10 ⁵
Pb-205		Unlimited	Unlimited	Unlimited	Unlimited	4.5x10 ⁻⁶	1.2x10 ⁻⁴
Pb-210		0.6	16.2	9x10 ⁻³	0.243	2.8	7.6x10 ¹
Pb-212		0.3	8.11	0.3	8.11	5.1x10 ⁴	1.4x10 ⁶
Pd-103	Palladium(46)	40	1080	40	1080	2.8x10 ³	7.5x10 ⁴
Pd-107		Unlimited	Unlimited	Unlimited	Unlimited	1.9x10 ⁻⁵	5.1x10 ⁻⁴

Symbol of Radioisotope	Element and Atomic Number	A ₁ (TBq)	A ₁ (Ci)	A ₂ (TBq)	A ₂ (Ci)	Specific Activity (TBq/g)	Specific (Ci/g)
Pd-109		0.6	16.2	0.5	13.5	7.9x10 ⁴	2.1x10 ⁶
Pm-143	Promethium(61)	3	81.1	3	81.1	1.3x10 ²	3.4x10 ³
Pm-144		0.6	16.2	0.6	16.2	9.2x10 ¹	2.5x10 ³
Pm-145		30	811	7	189	5.2	1.4x10 ²
Pm-147		40	1080	0.9	24.3	3.4x10 ¹	9.3x10 ²
Pm-148m		0.5	13.5	0.5	13.5	7.9x10 ²	2.1x10 ⁴
Pm-149		0.6	16.2	0.5	13.5	1.5x10 ⁴	4.0x10 ⁵
Pm-151		3	81.1	0.5	13.5	2.7x10 ⁴	7.3x10 ⁵
Po-208	Polonium(84)	40	1080	2x10 ²	0.541	2.2x10 ¹	5.9x10 ²
Po-209		40	1080	2x10 ²	0.541	6.2x10 ⁻¹	1.7x10 ¹
Po-210		40	1080	2x10 ²	0.541	1.7x10 ²	4.5x10 ³
Pr-142	Praseodymium(59)	0.2	5.41	0.2	5.41	4.3x10 ⁴	1.2x10 ⁶
Pr-143		4	108	0.5	13.5	2.5x10 ³	6.7x10 ⁴
Pr-188	Platinum(78)	0.6	16.2	0.6	16.2	2.5x10 ³	6.8x10 ⁴
Pr-191		3	81.1	3	81.1	8.7x10 ³	2.4x10 ⁵
Pr-193m		40	1080	9	243	5.8x10 ³	1.6x10 ⁵
Pr-193		40	1080	40	1080	1.4	3.7x10 ¹
Pr-195m		10	270	2	54.1	6.2x10 ³	1.7x10 ⁵
Pr-197m		10	270	0.9	24.3	3.7x10 ⁵	1.0x10 ⁷
Pr-197		20	541	0.5	13.5	3.2x10 ⁴	8.7x10 ⁵
Pu-236	Plutonium(94)	7	189	7x10 ⁴	1.89x10 ²	2.0x10 ¹	5.3x10 ²
Pu-237		20	541	20	541	4.5x10 ²	1.2x10 ⁴
Pu-238		2	54.1	2x10 ⁴	5.41x10 ³	6.3x10 ⁻¹	1.7x10 ¹
Pu-239		2	54.1	2x10 ⁴	5.41x10 ³	2.3x10 ⁻³	6.2x10 ²
Pu-240		2	54.1	2x10 ⁴	5.41x10 ³	8.4x10 ⁻³	2.3x10 ⁻¹
Pu-241		40	1080	1x10 ²	0.270	3.8	1.0x10 ²
Pu-242		2	54.1	2x10 ⁴	5.41x10 ⁻³	1.5x10 ⁻⁴	3.9x10 ⁻³
Pu-244		0.3	8.11	2x10 ⁴	5.41x10 ⁻³	6.7x10 ⁻⁷	1.8x10 ⁻⁵

Figure 5: 25 TAC §289.257(s)(2)

Symbol of Radionuclide	Element and Atomic Number	A ₁ (TBq)	A ₁ (Ci)	A ₂ (TBq)	A ₂ (Ci)	Specific Activity (TBq/g)	(Ci/g)
Ra-223	Radium(88)	0.6	16.2	3x10 ²	0.811	1.9x10 ³	5.1x10 ⁴
Ra-224		0.3	8.11	6x10 ⁻²	1.62	5.9x10 ³	1.6x10 ⁵
Ra-225		0.6	16.2	2x10 ⁻²	0.541	1.5x10 ³	3.9x10 ⁴
Ra-226	Radium(88)	0.3	8.11	2x10 ⁻²	0.541	3.7x10 ⁻²	1.0
Ra-228		0.6	16.2	4x10 ⁻²	1.08	1.0x10 ¹	2.7x10 ²
Rb-81		2	54.1	0.9	24.3	3.1x10 ⁵	8.4x10 ⁶
Rb-83	Rubidium(37)	2	54.1	2	54.1	6.8x10 ²	1.8x10 ⁴
Rb-84		1	27.0	0.9	24.3	1.8x10 ³	4.7x10 ⁴
Rb-86		0.3	8.11	0.3	8.11	3.0x10 ³	8.1x10 ⁴
Rb-87	Rubidium(37)	Unlimited	Unlimited	Unlimited	Unlimited	3.2x10 ⁹	8.6x10 ⁻⁴
Rb (natural)		Unlimited	Unlimited	Unlimited	Unlimited	6.7x10 ⁶	1.8x10 ⁸
Re-183		5	135	5	135	3.8x10 ²	1.0x10 ⁴
Re-184m	Rhenium(75)	3	81.1	3	81.1	1.6x10 ²	4.3x10 ³
Re-184		1	27.0	1	27.0	6.9x10 ²	1.9x10 ⁴
Re-186		4	108	0.5	13.5	6.9x10 ³	1.9x10 ⁵
Re-187	Rhenium(75)	Unlimited	Unlimited	Unlimited	Unlimited	1.4x10 ⁹	3.8x10 ⁻⁴
Re-188		0.2	5.41	0.2	5.41	3.6x10 ⁴	9.8x10 ⁵
Re-189		4	108	0.5	13.5	2.5x10 ⁴	6.8x10 ⁵
Re (natural)	Rhenium(75)	Unlimited	Unlimited	Unlimited	Unlimited	—	2.4x10 ⁻⁴
Rh-99		2	54.1	2	54.1	3.0x10 ³	8.2x10 ⁴
Rh-101		4	108	4	108	4.1x10 ¹	1.1x10 ³
Rh-102m	Rhodium(45)	2	54.1	0.9	24.3	2.3x10 ²	6.2x10 ³
Rh-102		0.5	13.5	0.5	13.5	4.5x10 ¹	1.2x10 ³
Rh-103m		40	1080	40	1080	1.2x10 ⁶	3.3x10 ⁷
Rh-105	Rhodium(45)	10	270	0.9	24.3	3.1x10 ⁴	8.4x10 ⁵
Rn-222		0.2	5.41	4x10 ⁻³	0.108	5.7x10 ³	1.5x10 ⁵
Ru-97		4	108	4	108	1.7x10 ⁴	4.6x10 ⁵
Ru-103	Ruthenium(44)	2	54.1	0.9	24.3	1.2x10 ³	3.2x10 ⁴

Figure 5: 25 TAC §289.257(s)(2)

Symbol of Radionuclide	Element and Atomic Number	A ₁ (TBq)	A ₁ (Ci)	A ₂ (TBq)	A ₂ (Ci)	Specific Activity (TBq/g)	(Ci/g)
Ru-105	Sulfur(16) Antimony(51)	0.6	16.2	0.5	13.5	2.5x10 ⁵	6.7x10 ⁶
Ru-106		0.2	5.41	0.2	5.41	1.2x10 ²	3.3x10 ³
S-35		40	1080	2	54.1	1.6x10 ³	4.3x10 ⁴
Sb-122		0.3	8.11	0.3	8.11	1.5x10 ⁴	4.0x10 ⁵
Sb-124		0.6	16.2	0.5	13.5	6.5x10 ²	1.7x10 ⁴
Sb-125	Scandium(21)	2	54.1	0.9	24.3	3.9x10 ¹	1.0x10 ³
Sb-126		0.4	10.8	0.4	10.8	3.1x10 ³	8.4x10 ⁴
Sc-44		0.5	13.5	0.5	13.5	6.7x10 ⁵	1.8x10 ⁷
Sc-46		0.5	13.5	0.5	13.5	1.3x10 ³	3.4x10 ⁴
Sc-47		9	243	0.9	24.3	3.1x10 ⁴	8.3x10 ⁵
Sc-48	Selenium(34)	0.3	8.11	0.3	8.11	5.5x10 ⁴	1.5x10 ⁶
Se-75		3	81.1	3	81.1	5.4x10 ²	1.5x10 ⁴
Se-79		40	1080	2	54.1	2.6x10 ⁻³	7.0x10 ⁻²
Si-31	Silicon(14)	0.6	16.2	0.5	13.5	1.4x10 ⁶	3.9x10 ⁷
Si-32		40	1080	0.2	5.41	3.9	1.1x10 ²
Si-32		20	541	20	541	9.8x10 ¹	2.6x10 ³
Sm-145	Samarium(62)	Unlimited	Unlimited	Unlimited	Unlimited	8.5x10 ⁻¹	2.3x10 ⁻⁴
Sm-147		40	1080	4	108	9.7x10 ⁻¹	2.6x10 ¹
Sm-151		4	108	0.5	13.5	1.6x10 ⁴	4.4x10 ⁵
Sm-153		4	108	4	108	3.7x10 ²	1.0x10 ⁴
Sn-113		6	162	2	54.1	3.0x10 ³	8.2x10 ⁴
Sn-117m	Tin(50)	40	1080	40	1080	1.4x10 ²	3.7x10 ³
Sn-119m		40	1080	0.9	24.3	2.0	5.4x10 ¹
Sn-121m		0.6	16.2	0.5	13.5	3.0x10 ²	8.2x10 ³
Sn-123		0.2	5.41	0.2	5.41	4.0x10 ³	1.1x10 ⁵
Sn-125		0.3	8.11	0.3	8.11	1.0x10 ⁻³	2.8x10 ⁻²
Sn-126	Strontium(38)	0.2	5.41	0.2	5.41	2.3x10 ³	6.2x10 ⁴
Sr-82		5	135	5	135	1.2x10 ⁶	3.3x10 ⁷
Sr-85m							

Figure 5: 25 TAC §289.257(s)(2)

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Symbol of Radionuclide	Element and Atomic Number	A ₁ (TBq)	A ₁ (Ci)	A ₂ (TBq)	A ₂ (Ci)	Specific Activity (TBq/g)	(Ci/g)
Sr-85	Strontium(38)	2	54.1	2	54.1	8.8x10 ²	2.4x10 ⁴
Sr-87m		3	81.1	3	81.1	4.8x10 ⁵	1.3x10 ⁷
Sr-89		0.6	16.2	0.5	13.5	1.1x10 ³	2.9x10 ⁴
Sr-90		0.2	5.41	0.1	2.70	5.1	1.4x10 ²
Sr-91		0.3	8.11	0.3	8.11	1.3x10 ⁵	3.6x10 ⁶
Sr-92	Strontium(38)	0.8	21.6	0.5	13.5	4.7x10 ⁵	1.3x10 ⁷
T		40	1080	40	1080	3.6x10 ²	9.7x10 ³
Ta-178		1	27.0	1	27.0	4.2x10 ⁶	1.1x10 ⁸
Ta-179	Tantalum(73)	30	811	30	811	4.1x10 ¹	1.1x10 ³
Ta-182		0.8	21.6	0.5	13.5	2.3x10 ²	6.2x10 ³
Tb-157	Terbium(65)	40	1080	10	270	5.6x10 ⁻¹	1.5x10 ¹
Tb-158		1	27.0	0.7	18.9	5.6x10 ⁻¹	1.5x10 ¹
Tb-160	Technetium(43)	0.9	24.3	0.5	13.5	4.2x10 ²	1.1x10 ⁴
Tc-95m		2	54.1	2	54.1	8.3x10 ²	2.2x10 ⁴
Tc-96m		0.4	10.8	0.4	10.8	1.4x10 ⁶	3.8x10 ⁷
Tc-96		0.4	10.8	0.4	10.8	1.2x10 ⁴	3.2x10 ⁵
Tc-97m		40	1080	40	1080	5.6x10 ²	1.5x10 ⁴
Tc-97	Technetium(43)	Unlimited	Unlimited	Unlimited	Unlimited	5.2x10 ⁻⁵	1.4x10 ⁻³
Tc-98		0.7	18.9	0.7	18.9	3.2x10 ⁻⁵	8.7x10 ⁻⁴
Tc-99m		8	216	8	216	1.9x10 ⁵	5.3x10 ⁶
Tc-99		40	1080	0.9	24.3	6.3x10 ⁻⁴	1.7x10 ⁻²
Te-118		0.2	5.41	0.2	5.41	6.8x10 ³	1.8x10 ⁵
Te-121m	Tellurium(52)	5	135	5	135	2.6x10 ²	7.0x10 ³
Te-121		2	54.1	2	54.1	2.4x10 ³	6.4x10 ⁴
Te-123m		7	189	7	189	3.3x10 ²	8.9x10 ³
Te-125m		30	811	9	243	6.7x10 ²	1.8x10 ⁴

Symbol of Radionuclide	Element and Atomic Number	A ₁ (TBq)	A ₁ (Ci)	A ₂ (TBq)	A ₂ (Ci)	Specific Activity (TBq/g)	(Ci/g)
Te-127m	Thorium(90)	20	541	0.5	13.5	3.5x10 ²	9.4x10 ³
Te-127		20	541	0.5	13.5	9.8x10 ⁴	2.6x10 ⁶
Te-129m		0.6	16.2	0.5	13.5	1.1x10 ³	3.0x10 ⁴
Te-129		0.6	16.2	0.5	13.5	7.7x10 ⁵	2.1x10 ⁷
Te-131m		0.7	18.9	0.5	13.5	3.0x10 ⁴	8.0x10 ⁵
Te-132		0.4	10.8	0.4	10.8	1.1x10 ⁴	3.0x10 ⁵
Th-227		9	243	1x10 ⁻²	0.270	1.1x10 ³	3.1x10 ⁴
Th-228		0.3	8.11	4x10 ⁻⁴	1.08x10 ⁻²	3.0x10 ¹	8.2x10 ²
Th-229		0.3	8.11	3x10 ⁻⁵	8.11x10 ⁻⁴	7.9x10 ⁻³	2.1x10 ⁻¹
Th-230		2	54.1	2x10 ⁻⁴	5.41x10 ⁻³	7.6x10 ⁻⁴	2.1x10 ⁻²
Th-231	Unlimited	40	1080	0.9	24.3	2.0x10 ⁴	5.3x10 ⁵
Th-232		Unlimited	Unlimited	Unlimited	Unlimited	4.0x10 ⁻⁹	1.1x10 ⁻⁷
Th-234		0.2	5.41	0.2	5.41	8.6x10 ²	2.3x10 ⁴
Th (natural)		Unlimited	Unlimited	Unlimited	Unlimited	8.1x10 ⁻⁹	2.2x10 ⁻⁷
Ti-144	Titanium(22)	0.5	13.5	0.2	5.41	6.4	1.7x10 ²
Ti-200		0.8	21.6	0.8	21.6	2.2x10 ⁴	6.0x10 ⁵
Tl-201	Thallium(81.1)	10	270	10	270	7.9x10 ³	2.1x10 ⁵
Tl-202		2	54.1	2	54.1	2.0x10 ³	5.3x10 ⁴
Tl-204	Thulium(69)	4	108	0.5	13.5	1.7x10 ¹	4.6x10 ²
Tm-167		7	189	7	189	3.1x10 ³	8.5x10 ⁴
Tm-168		0.8	21.6	0.8	21.6	3.1x10 ²	8.3x10 ³
Tm-170		4	108	0.5	13.5	2.2x10 ²	6.0x10 ³
Tm-171	Uranium(92)	40	1080	10	270	4.0x10 ¹	1.1x10 ³
U-230		40	1080	1x10 ⁻²	0.270	1.0x10 ³	2.7x10 ⁴
U-232		3	81.1	3x10 ⁻⁴	8.11x10 ⁻³	8.3x10 ⁻¹	2.2x10 ¹
U-233		10	270	1x10 ⁻³	2.70x10 ⁻²	3.6x10 ⁻⁴	9.7x10 ⁻³
U-234		10	270	1x10 ⁻³	2.70x10 ⁻²	2.3x10 ⁻⁴	6.2x10 ⁻³

Symbol of Radionuclide	Element and Atomic Number	A ₁ (TBq)	A ₁ (Ci)	A ₂ (TBq)	A ₂ (Ci)	Specific Activity (TBq/g)	Specific (Ci/g)
U-235	U (natural)	Unlimited	Unlimited	Unlimited	Unlimited	8.0x10 ⁻⁴	2.2x10 ⁻⁶
U-236		10	270	1x10 ⁻³	2.70x10 ⁻²	2.4x10 ⁻⁶	6.5x10 ⁻⁵
U-238		Unlimited	Unlimited	Unlimited	Unlimited	1.2x10 ⁻⁴	3.4x10 ⁻⁷
U (natural)		Unlimited	Unlimited	Unlimited	Unlimited	2.6x10 ⁻⁴	7.1x10 ⁻⁷
U (enriched 5 % or less)	U (enriched more than 5 %)	Unlimited	Unlimited	Unlimited	Unlimited	—	*
U (enriched more than 5 %)		10	270	1x10 ⁻³	2.70x10 ⁻²	—	*
U (depleted)	Vanadium(23)	Unlimited	Unlimited	Unlimited	Unlimited	—	*
V-48		0.3	8.11	0.3	8.11	6.3x10 ³	1.7x10 ⁵
V-49	Tungsten(74)	40	1080	40	1080	3.0x10 ²	8.1x10 ³
W-178		1	27.0	1	27.0	1.3x10 ³	3.4x10 ⁴
W-181		30	811	30	811	2.2x10 ²	6.0x10 ³
W-185		40	1080	0.9	24.3	3.5x10 ²	9.4x10 ³
W-187	Xenon(54)	2	54.1	0.5	13.5	2.6x10 ⁴	7.0x10 ⁵
W-188		0.2	5.41	0.2	5.41	3.7x10 ²	1.0x10 ⁴
Xe-122		0.2	5.41	0.2	5.41	4.8x10 ⁴	1.3x10 ⁶
Xe-123		0.2	5.41	0.2	5.41	4.4x10 ⁵	1.2x10 ⁷
Xe-127	Yttrium(39)	4	108	4	108	1.0x10 ³	2.8x10 ⁴
Xe-131m		40	1080	40	1080	3.1x10 ³	8.4x10 ⁴
Xe-133		20	541	20	541	6.9x10 ³	1.9x10 ⁵
Xe-135		4	108	4	108	9.5x10 ⁴	2.6x10 ⁶
Y-87	Yttrium(39)	2	54.1	2	54.1	1.7x10 ⁴	4.5x10 ⁵
Y-88		0.4	10.8	0.4	10.8	5.2x10 ²	1.4x10 ⁴
Y-90		0.2	5.41	0.2	5.41	2.0x10 ⁴	5.4x10 ⁵
Y-91m		2	54.1	2	54.1	1.5x10 ⁶	4.2x10 ⁷
Y-91	Yttrium(39)	0.3	8.11	0.3	8.11	9.1x10 ²	2.5x10 ⁴
Y-92		0.2	5.41	0.2	5.41	3.6x10 ⁵	9.6x10 ⁶

* See subsection (s)(4) of this section.

Figure 5: 25 TAC §289.257(s)(2)

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Symbol of Radionuclide	Element and Atomic Number	A ₁ (TBq)	A ₁ (Ci)	A ₂ (TBq)	A ₂ (Ci)	Specific Activity (TBq/g)	(Ci/g)
Y-93		0.2	5.41	0.2	5.41	1.2x10 ⁵	3.3x10 ⁶
Yb-169	Ytterbium(70)	3	81.1	3	81.1	8.9x10 ²	2.4x10 ⁴
Yb-175		30	811	0.9	24.3	6.6x10 ³	1.8x10 ⁵
Zn-65	Zinc(30)	2	54.1	2	54.1	3.0x10 ²	8.2x10 ³
Zn-69m		2	54.1	0.5	13.5	1.2x10 ⁵	3.3x10 ⁶
Zn-69		4	108	0.5	13.5	1.8x10 ⁶	4.9x10 ⁷
Zr-88	Zirconium(40)	3	81.1	3	81.1	6.6x10 ²	1.8x10 ⁴
Zr-93		40	1080	0.2	5.41	9.3x10 ⁻⁵	2.5x10 ⁻³
Zr-95		1	27.0	0.9	24.3	7.9x10 ²	2.1x10 ⁴
Zr-97		0.3	8.11	0.3	8.11	7.1x10 ⁴	1.9x10 ⁶

Figure 6: 25 TAC §289.257(s)(3)

Contents	A ₁		A ₂	
	(TBq)	(Ci)	(TBq)	(Ci)
Only beta- or gamma-emitting nuclides are known to be present.	0.2	5	0.02	0.5
Alpha-emitting nuclides are known to be present, or no relevant data are available.	0.10	2.70	2×10^{-5}	5.41×10^{-4}

Figure 7: 25 TAC §289.257(s)(4)

Uranium Enrichment* wt % U-235 present	Specific Activity	
	TBq/g	Ci/g
0.45	1.8×10^{-8}	5.0×10^{-7}
0.72	2.6×10^{-8}	7.1×10^{-7}
1.0	2.8×10^{-8}	7.6×10^{-7}
1.5	3.7×10^{-8}	1.0×10^{-6}
5.0	1.0×10^{-7}	2.7×10^{-6}
10.0	1.8×10^{-7}	4.8×10^{-6}
20.0	3.7×10^{-7}	1.0×10^{-5}
35.0	7.4×10^{-7}	2.0×10^{-5}
50.0	9.3×10^{-7}	2.5×10^{-5}
90.0	2.2×10^{-6}	5.8×10^{-5}
93.0	2.6×10^{-6}	7.0×10^{-5}
95.0	3.4×10^{-6}	9.1×10^{-5}

* The figures for uranium include representative values for the activity of the uranium-235 which is concentrated during the enrichment process.

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas State Board of Public Accountancy

Friday, October 3, 1997, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Continuing Professional Education Committee

AGENDA:

Consideration of report and recommendation of the CPE Committee

CPE Strategic plan for next fiscal year.

Contact: Paul Gavia, 333 Guadalupe Street, Tower III, Room 900,
Austin, Texas 78701-3900, (512) 305-7845.

Filed: September 24, 1997, 9:18 a.m.

TRD-9712679



Texas Bond Review Board

Tuesday, September 30, 1997, 10:00 a.m.

Conference Room 3W.9, State Capitol

Austin

AGENDA:

I. Call to Order

II. Executive Session — Consideration of applicants for Executive
Director position.

III. Other Business

A. Action/announcements related to Executive Director position

B. Designation of authority to approve vouchers for submission to
Comptroller of Public Accounts

IV. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin,
Texas 78701, (512) 463-1741.

Filed: September 22, 1997, 3:00 p.m.

TRD-9712620



Texas Association of Counties

Tuesday, September 30, 1997, 1:00 p.m.

1204 San Antonio Street

Austin

County Government Risk Management Pool

AGENDA:

Call to Order 1:00 p.m. — Honorable Bonnie Wolbrueck

Deliberate on and take any necessary action for consideration/
approval of transfer or reinsurance coverage for public officials and
law enforcement liability coverage to County Reinsurance, Limited.

Adjourn

Contact: James Jean, P.O. Box 2131, Austin, Texas, 78768, (512)
478-8753

Filed: September 23, 1997, 2:19 p.m.

TRD-9712653



Texas Department of Economic Development

Friday, October 3, 1997, 11:50 a.m.

1700 North Congress Avenue, Room 118

Austin

Texas Economic Development Corporation

AGENDA:

11:50 Call to Order; Review of Minutes from Meeting of August 20,
1997; Election of Officers of Corporation; Discussion and Ratification
of Contract between the TEDC and the Department; Resolution

Authorizing Mark Langdale to Execute the Fund Management Agreement with the State Treasurer, Authorizing Mark Langdale and Lane Lanford to issue instructions to the State Treasurer and Authorize the President, Vice President and Secretary to co-approve Corporation expenditures in the amount of \$2,001 to \$25,000 in accordance with the Corporation's Operating Procedures; Approval to Pay Printing Cost for Global Texas Publications; Public Comments; Adjourn.

Contact: Shirley Zimmerman, 1700 North Congress, Austin, Texas 78701, (512) 936-0158.

Filed: September 25, 1997, 4:18 p.m.

TRD-9712800

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Friday, October 3, 1997, 12:20 p.m.

1700 North Congress Avenue, Room 118

Austin

Texas Small Business Industrial Development Corporation

AGENDA:

12:20, Call to Order; Review of Minutes from Meeting of August 20, 1997; Election of Officers; Overview of Letter of Credit Guaranteed Investment Contract and TSBIDC Floating Rate Demand Revenue Bonds; Public Comments; Adjourn.

Contact: Shirley Zimmerman, 1700 North Congress, Austin, Texas 78701, (512) 936-0158.

Filed: September 25, 1997, 4:17 p.m.

TRD-9712798

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Friday, October 3, 1997, 12:40 p.m.

1700 North Congress Avenue, Room 118

Austin

TEXCAP Financing Corporation

AGENDA:

12:40 Call to Order; Review of Minutes from Meeting of August 20, 1997; Election of Officers of Corporation; Public Comments; Adjourn

Contact: Shirley Zimmerman, 1700 North Congress, Austin, Texas 78701, (512) 936-0158.

Filed: September 25, 1997, 4:18 p.m.

TRD-9712799

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Friday, October 3, 1997, 2:00 p.m.

1700 North Congress Avenue, Room 118

Austin

Governing Board

AGENDA:

2:00, Call to Order; Recess into Executive Session; Call back to order; Review of the minutes from the Texas Department of Commerce Policy Board meeting of August 20, 1997; Report from

Executive Director; Election of Vice Chair of Governing Board; Election of Secretary of Governing Board; Overview of Internal Auditor's Role and Appointment of Audit Committee and Election of Chairman; Set Governing Board Meeting Dates and Locations; Consider the Appointment of an Investment Officer in Compliance with the Public Funds Investment Act; Consider Final Adoption of Rules Amending the Rules for Linked Deposit Program; Review Department's Budget for FY 1989, 1999; Presentation of the Smart Jobs Fund Grants Awarded through August 31, 1997; Report of TSBIDC Investment Transactions; Report by Texas Workforce Commission; Discuss Advisory Boards or Commissions to be Appointed; Discuss and Direct Staff to Draft Rules for Governing Board's Internal Management and Control; Public Comments; Board Comments; Adjourn.

Contact: Shirley Zimmerman, 1700 North Congress, Austin, Texas 78701, (512) 936-0158.

Filed: September 25, 1997, 4:17 p.m.

TRD-9712797

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State Board for Educator Certification

Friday, October 3, 1997, 9:00 a.m.

1001 Trinity, TRS Building, Board Room, Fifth Floor

Austin

AGENDA:

1. Call to Order; 2. Approve September 12th Minutes; 3. Appoint Members to the Advisory Committee on Educator Certificates; 4. Executive Director's Update. a. Budget Report. b. Advisory Committee Update. c. Update on Investigations. d. Other; 5. Update on Input Received on the Framework for Educator Preparation and Certification; 6. Discuss the Framework for the Examination for the Certification of Educators in Texas (ExCET), Visually Impaired Test; 7. Discuss Adoption of the Examination for the Certification of educators in Texas (ExCET), Secondary Health Education Test; 8. Discuss Proposed New 19 TAC, Chapter 232, Subchapter M, Types and Classes of Certificates Issued and Subchapter R, Certificate Renewal and Continuing Professional Education Requirements, and the Proposed Repeal of 19 TAC Chapter 230, Subchapter V, Continuing Education; 9. Propose New 19 TAC §230.512, Emergency Certificates; 10. Propose New 19 TAC Chapter 249, Disciplinary Proceedings and Sanctions, and Chapter 247, Educator's Code of Ethics, and Proposed Amendment to 19 TAC §230.414, Certificates for Persons with Criminal Backgrounds; 11. Propose New 19 TAC Chapter 244, Certificate of Completion of Training for Appraisers; 12. Propose new 19 TAC Chapter 229, Accountability System for Education Preparation, and Proposed Repeal of 19 TAC §§230.1, General Provisions, 230.2, Purpose of Institutional Accountability System, 230.3, Criteria for Institutional Accountability, and 230.4, The Accreditation Process; 13. Approve the Passing Standards for the Texas Assessment of Sign Communication (TASC) and the Texas Assessment of Sign Communication- American Sign Language (TASC-ASL); 14. Approve the Assessments and Passing Standards to Meet the Basic Skills Requirement for Admission to an Educator Preparation Program 15. Approve the Region 20 Alternative Certification Program for the Administrator (Mid-Management) Certificate; 16. Approve Additional Programs at Entities Currently Approved to Deliver Educator Preparation; 17. Approve the State Partnership with the Na-

tional Council for the Accreditation of Teacher Education (NCATE).
18. Approve Workplace Guidelines for HIV/AIDS and Sexual Harassment; 19 Discuss Proposed EEO and ADA Workplace Policies.

Individuals needing translation services or other special accommodations should notify the State Board for Educator Certification by 5:00 p.m. on Friday, September 26, 1997. Hearing and speech impaired individuals may contact the Board by TDD through Relay Texas (800) 735-2989. Those with other needs may contact Denise Jones at (512) 469-3030.

Contact: Dawn Capra, 1701 North Congress Avenue, Austin, Texas 78701, (512) 469-3005.

Filed: September 25, 1997, 9:38 a.m.

TRD-9712738



Advisory Commission on State Emergency Communications

Wednesday, October 8, 1997, 9:00 a.m.

333 Guadalupe, Room 100

Austin

Legislative/Regulatory Committee

AGENDA:

The Committee Will Call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Committee Action, as necessary: Update on 9-1-1 Service Fee Billing Issues and Potential ACSEC Rule Making or Proposed Amendment to Rule 255.4; Consider comments Received and Adoption of Proposed Rules including: 252.5, Local Adoption of State Provision or Rule: 252.6, Wireless Service Fee Proportional Distribution, and Regarding Specific Proportional Distributions of Wireless Service Fees; and 255.10, Notification of Untimely Remittance of Fees; Public Utility Commission Rulemaking and National Activity on N-1-1; ACSEC Filing for Declaratory Order on GTE Relating to 9-1-1 Routing Issues; Other Public Utility Commission or Federal Communications Commission Matters; Approval of April 17, 1997 Meeting Minutes. The Commission may meet in Executive Session on any of the items as authorized per Texas Open Meetings Act, and pursuant to Government Code 551, Subchapter D, 551.071, consultation with Assistant Attorneys General on pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting interpreter services for the hearing and speech impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia Williams, ACSEC, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: September 26, 1997, 2:59 p.m.

TRD-9712841



Wednesday, October 8, 1997, 10:00 a.m.

333 Guadalupe, Room 100

Austin

Operations and Performance Committee

AGENDA:

The Committee Will Call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Committee Action, as necessary: ACSEC Financial Report; Update on Agency Staffing Request to the Legislative Budget Board and Governor's Office Pursuant to General Appropriations Act of the 75th Legislative Session; Review and Consider Agency Audit Matters Including: State Auditor's Audits on Councils of Governments and Follow-up Activity with ACSEC; Annual Internal Audit Report; Telephone Company Audits; Status Report on Audit Resolution Process and Procedural Rules: and Audit of Service Fee Transmittals by Telephone Companies to Districts and Other 9-1-1 Entities Statewide; GTE Service Fee Remittance and Collection; Approval of July 9 1997 Meeting Minutes. The Commission may meet in Executive Session on any of the items as authorized per Texas Open Meetings Act, and pursuant to Government Code 551, Subchapter D, 551.071, consultation with Assistant Attorneys General on pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting interpreter services for the hearing and speech impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia Williams, ACSEC, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: September 26, 1997, 2:59 p.m.

TRD-9712842



Wednesday, October 8, 1997, 1:15 p.m.

333 Guadalupe, Room 100

Austin

Poison Control Committee

AGENDA:

The Committee Will Call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Committee Action, as necessary: Poison Control Financial Report; 1998 Grant Review Process for Poison Control Answering Points (PCAPs); Finalization of FY 1998 Poison Control Budget and Supporting Surcharge Rate; Poison Control Coordinating Committee Report; Phase II, Telecommunications Implementation; Approval of July 9, 1997 Meeting Minutes. The Commission may meet in Executive Session on any of the items as authorized per Texas Open Meetings Act, and pursuant to Government Code 551, Subchapter D, 551.071, consultation with Assistant Attorneys General on pending or contemplated litigation or to seek legal advice.

Persons requesting interpreter services for the hearing and speech impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia Williams, ACSEC, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: September 26, 1997, 2:59 p.m.

TRD-9712843



Wednesday, October 8, 1997, 2:30 p.m.

333 Guadalupe, Room 100

Austin

Planning and Implementation Committee

AGENDA:

The Committee Will Call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Committee Action, as necessary: FY 1998 and FY 1999 Strategic Plan Financial Impact and Reallocation of Budget Authority; Proposed Amendment to Rule 251.7, Guidelines for Implementing Integrated Services; Update on 9-1-1 and Local Service provider and Wireless Service Provider Activities; Ark-Tex Council of Governments' Regional Plan Amendment; Capital Area Planning Council's Regional Plan Amendment; Capital Area Planning Council Request for Insurance Coverage; City of Corpus Christi's Proposed Withdrawal from the Coastal Bend Council of Governments' 9-1-1 Regional Plan; Private Switch Waiver Request from Texas Women's University; Presentation of Lifesafety Solutions, Supplemental ALI; Approval of May 29 and July 9, 1997 Meeting Minutes. The Commission may meet in Executive Session on any of the items as authorized per Texas Open Meetings Act, and pursuant to Government Code 551, Subchapter D, 551.071, consultation with Assistant Attorneys General on pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting interpreter services for the hearing and speech impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia Williams, ACSEC, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: September 26, 1997, 2:59 p.m.

TRD-9712844

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Thursday, October 9, 1997, 8:30 a.m.

333 Guadalupe, Room 100

Austin

Executive Committee

AGENDA:

The Committee Will Call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Committee Action, as necessary: Executive Director's Self Evaluation. The Commission may meet in Executive Session on any of the items as authorized per Texas Open Meetings Act, and pursuant to Government Code 551, Subchapter D, 551.071, consultation with Assistant Attorneys General on pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting interpreter services for the hearing and speech impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia Williams, ACSEC, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: September 26, 1997, 2:59 p.m.

TRD-9712845

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Thursday, October 9, 1997, 9:00 a.m.

333 Guadalupe, Room 100

Austin

AGENDA:

The Committee Will Call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Committee Action, as necessary: Executive Committee Report on Executive Director's Self Evaluation; Sunset Review Process; Update on Request for Proposal for Data Base Operations and Network Systems Configuration; Poison Control Committee Report; Operations and Performance Committee Report; Planning and Implementation Committee Report; Legislative/Regulatory Committee Report; Approval of August 4, 1997 Commission Meeting Minutes. The Commission may meet in Executive Session on any of the items as authorized per Texas Open Meetings Act, and pursuant to Government Code 551, Subchapter D, 551.071, consultation with Assistant Attorneys General on pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting interpreter services for the hearing and speech impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia Williams, ACSEC, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: September 26, 1997, 3:00 p.m.

TRD-9712846

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State Employee Charitable Campaign

Wednesday, October 8, 1997, 9:00 a.m.

C.E.E.D. UT Permian Basin, SH 191 and FM 1788

Odessa

Local Employee Committee, McAllen

AGENDA:

1. Call to order
2. Reading of minutes of August 13, 1997
3. Review progress of current campaign
4. Continue review and refinement of strategies, goals and timelines
5. Review the 1997-98 budget and expenditures
6. Adjourn

Contact: Percy Symonette, 1209 West Wall Street, Midland, Texas 79701, (915) 685-7700.

Filed: September 26, 1997, 9:30 a.m.

TRD-9712806

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Wednesday, October 15, 1997, 8:30 a.m.

3231 North McColl, Suite B

McAllen

Local Employee Committee, McAllen

AGENDA:

1. Welcome
2. Update on distribution of materials
3. Agencies attending training
4. Results to date
5. Completion of paperwork
6. Questions and Answers
7. Next meeting date
8. Adjourn

Contact: Thelma Garza, P.O. Box 187, McAllen, Texas 78505, (956) 686-6331.

Filed: September 26, 1997, 9:30 a.m.

TRD-9712805



Employees Retirement System of Texas

Tuesday, October 14, 1997, 9:30 a.m.- Orientation- Meeting
— 1:30 p.m.

18th and Brazos Streets, First Floor Auditorium

Austin

Group Benefits Advisory Committee

AGENDA:

1. Call to order; 2. Introductions of GBAC Members; 3. Recognition of Visitors and Guests; 4. Approval of Minutes from Previous Meeting; 5. Announcements/Updates; 6. ERS Update; 7. Subcommittee Reports; 8. Other Related Benefits Business; 9. Adjournment.

Contact: James W. Sarver, 18th and Brazos, Austin, Texas 78701, (512) 867-3217.

Filed: September 29, 1997, 3:32 p.m.

TRD-9712915



Texas Growth Fund

Tuesday, September 30, 1997, 11:15 a.m.

1000 Red River

Austin

Board of Trustees

AGENDA:

1. Review and approve minutes of the Special Meeting of the Board of Trustees held on August 11, 1997.
2. Receive nominations for and elect a Treasurer.
3. Review and approve Resolution designating signatories on Texas Commerce Bank checking accounts.
4. Review and approve invoice from Vinson & Elkins L.L.P.
5. Receive an activity report from TGF Management Corp.
6. Receive and approve TGF Management Corp's. Fourth Quarter 1997 Budget Request.

7. Review and approve TGF Management Corp's. 1998 Budget Request.

8. Review and approve proposed investment(s).

9. Such other matters as may come before the Board of Trustees.

Contact: Janet Waldeier, 100 Congress Avenue, Suite 980, Austin, Texas 78701, (512) 322-3100.

Filed: September 22, 1997, 3:09 p.m.

TRD-9712624



Texas Department of Health

Wednesday, October 1, 1997, 3:00 p.m.

Tower Building, Room T407, 1100 West 49th Street

Austin

Abortion Facility Ad Hoc Rules Task Force-Sterilization Subcommittee

AGENDA:

The subcommittee will introduce members and guests and will discuss and possibly act on: developing standards of practice regarding methods and procedures for the sterilization of instruments or objects used in abortion facilities for inclusion in Abortion Facility Licensing Standards; developing standards of practice regarding infection control in abortion facilities for inclusion in Abortion Facility Licensing Standards; drafting rules (25 Texas Administrative Code, Chapter 139) for recommendation to the Abortion Ad Hoc Task Force covering (standards of practice concerning methods and procedures for the sterilization of instruments or objects used in abortion facilities; and standards of practice concerning infection control in abortion facilities); setting of future meeting dates for the subcommittee; and public comment (may be limited to three minutes per comment).

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Mark Jeffers, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6646.

Filed: September 23, 1997, 9:37 a.m.

TRD-9712640



Wednesday, October 8, 1997, 10:00 a.m.

Texas Department of Human Services, Region Seven, Building Two, Room 267, 7901 Cameron Road

Austin

Abortion Facility Ad Hoc Rules Task Force- Personnel Qualifications Subcommittee

AGENDA:

The subcommittee will introduce members and guests and will discuss and possibly act on: defining minimum qualifications for all levels of personnel in all aspects of the delivery of care to clients in abortion facilities for inclusion in Abortion Facility Licensing Rules; drafting rules (25 Texas Administrative Code, Chapter 139)

for recommendation to the Abortion Ad Hoc Task Force, defining minimum qualifications for all levels of personnel in all aspects of the delivery of care to clients in abortion facilities; setting of future meeting dates for the subcommittee; and public comment. (may be limited to three minutes per comment).

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Mark Jeffers, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6646.

Filed: September 24, 1997, 10:00 a.m.

TRD-9712690



Monday, October 13, 1997, 1:00 p.m.

Texas Department of Human Services, Region Seven, Building Two, Room 267, 7901 Cameron Road

Austin

Abortion Facility Ad Hoc Rules Task Force-Quality of Care Subcommittee

AGENDA:

The subcommittee will introduce members and guests and will discuss and possibly act on: identifying quality of care issues in abortion facilities for inclusion in Abortion Facility Licensing Rules; drafting rules (25 Texas Administrative Code, Chapter 139) for recommendation to the Abortion Ad Hoc Task Force covering quality of care in abortion facilities; setting of future meeting dates for the subcommittee; and public comment (may be limited to three minutes per comment).

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Mark Jeffers, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6646.

Filed: September 24, 1997, 10:00 a.m.

TRD-9712689



Wednesday, October 22, 1997, 9:00 a.m.

Joe C. Thompson Conference Center, Room 2.110, The University of Texas Campus

Austin

Abortion Facility Ad Hoc Rules Task Force

AGENDA:

The task force will introduce members and guests and will discuss and possibly act on: Sterilization Subcommittee report (draft rules (25 Texas Administrative Code (TAC), Chapter 139) covering (standards of practice for methods and procedures for the sterilization of instruments or objects used in abortion facilities; and standards of practice for infection control in abortion facilities) for recommendation to the Abortion Ad Hoc Task Force; Personnel Qualifications Subcommittee report (draft rules (25 TAC, Chapter 139) defining minimum qualifications for all levels of personnel in all aspects of the delivery of care

to clients in abortion facilities); for recommendation to the Abortion Ad Hoc Task Force; Quality of Care Subcommittees report (draft rules (25 TAC, Chapter 139) covering the quality of care in abortion facilities for recommendation to the Abortion Ad Hoc Task Force; Quality of Care Subcommittee report (draft rules (25 TAC, Chapter 139), covering the quality of care in abortion facilities for inclusion in abortion facility licensing standards); confirming and/or setting of future dates for committee and subcommittee meetings; and public comment (may be limited to three minutes per comment).

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Mark Jeffers, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6646.

Filed: September 24, 1997, 10:00 a.m.

TRD-9712688



Health Professions Council

Tuesday, October 7, 1997, 9:30 a.m.

333 Guadalupe Street, Suite 2-225

Austin

AGENDA:

1. Call to Order, 9:30 a.m.
2. Roll Call and Introductions
3. Minutes of August 28, 1997 Meeting
4. Reports of Committee
5. Old Business
6. New Business
- 6.1 Management Ratios Guidelines
- 6.2 GSC LAN Support Contract
- 6.3 Implementation of HB 561
- 6.4 Implementation of SB 30
7. Announcements
8. Comments from Audience
9. Next Meeting
10. Adjourn

Contact: Jane McFarland, 333 Guadalupe Street, Suite 2-220, Austin, Texas 78701, (512) 305-8550.

Filed: September 24, 1997, 11:26 a.m.

TRD-9712702



Texas Health Insurance Risk Pool

Thursday, October 2, 1997, 8:00 a.m.

Actuarial/Rating and Benefits Subcommittees (Joint Meeting): 8:00 a.m.; Staffing: 9:30 a.m.; Full Board: 10:00 a.m.

333 Guadalupe Street, Lobby, Room 102

Austin

Board of Directors and Actuarial/Rating and Benefits (Joint Meeting)
Subcommittees; Staffing

AGENDA:

Some members may participate via teleconference because of difficulty for such members to attend the meeting.

I. Actuarial/Rating and Benefits Subcommittees (Joint Meeting)

1. Opening Remarks by Chair of Committees
2. Hiring/Staffing matters: Deliberation regarding the retention of outside actuarial consultant and related matters. Discussion of possible benefit plans, actuarial and rating issues regarding such plans and related matters; Possible formulation of recommendations to full Board regarding the above-referenced matters.
3. Organization/Administrative Matters. Timelines/Future meetings of subcommittees; Other general administrative matters.

II. Staffing Committee

1. Opening Remarks by Chair of Committees
2. Hiring/Staffing: Discussion of hiring or staffing needs in the immediate or near future; Possible formulation of recommendations to full Board regarding the above-referenced matters.
3. Other Organizational/Administrative Matters: Timelines/Future meetings of subcommittee; Other general matters.

III. Full Board

1. Opening Remarks by Board Chair
2. Organization of Pool Business: Letter Agreement between TDI and the Health Insurance Risk Pool Board; Reports from Subcommittees; Recommendations, if any, from subcommittees; Discussion with outside legal counsel if one has been retained; Benefit plans and related matters, including actuarial and rating issues; Budget and Business Plan; Hiring/Staffing matters and procedures, including deliberations over retention or possible retention of outside consultants and internal staff; Plan of Operation
3. Other Organizational/Administrative Matters.

Timelines/Future meetings of subcommittee; Other general administrative matters.

Contact: Rhonda Myron, 333 Guadalupe Street, Austin, Texas 78701, (512) 463-6651.

Filed: September 24, 1997, 5:22 p.m.

TRD-9712730



Texas Department of Insurance

Friday, October 17, 1997, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100
Austin

AGENDA:

Docket Number 454-97-1512.C: To consider the application of VINCENT L. GUTIERREZ, Houston, Texas, for a Group I, Legal

Reserve Life Insurance Agent's License to be issued by the Texas Department of Insurance (reset from 10-1-97).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.
Filed: September 29, 1997, 9:44 a.m.

TRD-9712883



Friday, October 17, 1997, 1:00 p.m.

Pearland Municipal Court, 3519 Liberty Drive

Pearland

AGENDA:

Docket Number 454-97-1487.E: In the Matter of the Appeal request by MOHAMMED MEMON (Brazoria County) from a decision of the Texs Catastrophe Property Insurance Association (TCPIA) to deny coverage for damage to contents.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.
Filed: September 29, 1997, 11:42 a.m.

TRD-9712901



Monday, October 27, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100
Austin

AGENDA:

Docket Number 454-97-1594.C: To consider whether disciplinary action should be taken against VERNON R. REED, Holland, Texas and Temple, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License and Variable Contract Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.
Filed: September 29, 1997, 9:44 a.m.

TRD-9712884



Tuesday, October 28, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100
Austin

AGENDA:

Docket Number 454-97-1496.C: To consider the application of JOHN D. COOK, Dallas, Texas, for a Group I, Legal Reserve Life Insurance Agent's License to be issued by the Texas Department of Insurance (reset from 9-22-97).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.
Filed: September 29, 1997, 9:44 a.m.

TRD-9712885



Tuesday, October 28, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100
Austin

AGENDA:

Docket Number 454-97-1550.E: In the matter of the Appeal of TRAVELERS INDEMNITY COMPANY OF CONNECTICUT (formerly known as Travelers Indemnity Company of Rhode Island) from a decision of the TEXAS WORKERS' COMPENSATION INSURANCE FACILITY (Reset from 10-2-97).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: September 29, 1997, 9:44 a.m.

TRD-9712886



Friday, October 31, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100
Austin

AGENDA:

Docket Number 454-97-1701.C: To consider whether disciplinary action should be taken against SUZANNE M. LUNA, San Antonio, Texas, who holds a Solicitor's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: September 29, 1997, 9:45 a.m.

TRD-9712887



Texas Board of Professional Land Surveying

Thursday, October 9, 1997, 9:00 a.m.

Hyatt Regency, 300 Reunion Boulevard, Cotton Bowl Room

Dallas

Board Meeting

AGENDA:

On October 9, 1997, the Board will call to order, Introductions, comments from the public, R.J. Daum regarding ownership of firms offering surveying services, approval of August 1-2, 1997 minutes; to consider and act upon the director's report, possible revisions to Character, Reputation and Fitness Form, active complaints and show cause actions; Go into executive session for the purpose of J.E. Mortensen v R. Pounds et al (SOAH Docket Number 464-94-0861), Complaint 92-14, 95-38, 88-7, 92-28. Executive Session pursuant to Texas Government Code 551.071 for consultation with attorney concerning pending litigation and final actions, Return to Open Session — Action regarding litigation J.E. Mortensen v. R. Pounds et al (SOAH Docket Number 464-94-0861), Complaint 92-14, 95-38, 88-7, 92-28. Committee Reports: RPLS Examination Committee, LSLS Examination Committee, Continuing Education Committee, Highway Issues Committee, Oil Well Issues Committee, Legislation Needs, Rules, Possible consideration of Rule regarding a two-step process, notification of interested parties, default judgements, procedures for

applicants who have passed the FS exam in another state. Revision to Rule 663.20 regarding criminal convictions. Correspondence acknowledged, Other Business: Availability of electronic roster, Requirements for providing surveys on diskette (Rule 661.46), List of courses meeting requirements of Section 15, Future agenda items and meetings, comments from the public.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille are requested to contact Sandy Smith (512) 452-9427 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Sandy Smith, 7701 North Lamar, Suite 400, Austin, Texas 78752, (512) 452-9427.

Filed: September 26, 1997, 3:00 p.m.

TRD-9712847



Texas Department of Licensing and Regulation

Thursday, October 2, 1997, 9:30 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor, Room 420

Austin

Enforcement Division, Air Conditioning

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative sanctions and/or penalties against the Respondent, Ronald Winston, for failing to maintain insurance requirements to the Department in violation of 16 Texas Administrative Code (TAC) §75.40(b), for failing to provide proof of insurance in violation of 16 Texas Administrative Code (TAC) §75.40(e), and for failing to provide the consumer proper installation, service and mechanical integrity in violation of Texas Revised Civil Statutes Annotated articles 8861 (the Act) §5B, pursuant to the Texas Revised Civil Statutes Annotated articles 8861 and 9100 and the Texas Government Code chapter 2001 (APA) and 16 TAC chapter 75.

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: September 22, 1997, 3:08 p.m.

TRD-9712622



Thursday, October 2, 1997, 10:00 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor, Room 420

Austin

Enforcement Division, Air Conditioning

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative sanctions and/or penalties against the Respondent, Jose Alfredo Gonzalez, who advertised for the contracting of air conditioning and refrigeration work without a license in violation of 16 Texas Administrative Code (TAC) §75.22(a), pursuant to the Texas Civil Statutes

Annotated articles 8861 and 9100, the Texas Government Code Annotated §2001 (the APA) and 16 TAC §§60 and 75.

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: September 22, 1997, 3:08 p.m.

TRD-9712623



Tuesday, October 7, 1997, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor, Room 420

Austin

Enforcement Division, Air Conditioning

AGENDA:

According to the complete agenda, the Department will reopen the Administrative Hearing held on September 17, 1997, to consider possible assessment of administrative penalties against the Respondent, James Renfroe, and to determine whether the Respondent violated the Tex. Rev. Civ. Stat. Ann. art. 8861 (the Act) §§3B and 5(a) and 16 Tex. Admin. Code §75.22(a), as alleged in the Department's Notice of Administrative Hearing filed on August 19, 1997, pursuant to the Act and Texas Civil Statutes Annotated article 9100, the Texas Government Code Chapter 2001 and 16 TAC §§60 and 75.

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: September 26, 1997, 2:41 p.m.

TRD-9712839



Texas Lottery Commission

Tuesday, September 30, 1997, 10:00 a.m.

611 East Sixth Street, Grant Building, First Floor Auditorium

Austin

Bingo Advisory Committee

AGENDA:

According to the complete agenda, the Bingo Advisory Committee Chair will:

Call the meeting to order; consideration and possible approval of the minutes of the August 18, 1997, Committee Meeting; consideration, public comment, and possible action, including recommendations, on the issue of cardminder sales and/or proceeds as they relate to the 35% Charitable Distribution requirement; consideration, public comment, and possible action including recommendations, regarding notification requirements as they related to day and/or time change license amendments after October 1, 1997, pursuant to HB 2086; consideration, public comment, and possible action, including recommendations, regarding a training program pursuant to HB 2086; consideration, public comment, and possible action, including recommendations, regarding payments for license fee amendments; consideration, public comment, and possible action, including recommendations, regarding door prizes and/or raffles pursuant to HB 2086; consideration, public comment, and possible action, including recommendations, regarding a training program pursuant to HB 2086; consideration, public comment, and possible action, including recom-

mendations, regarding the necessity for an advertising fund pursuant to HB 2086; consideration, public comment, and possible action, including recommendations, regarding symbols on Pull-Tabs pursuant to HB 2086; consideration, public comment, and possible action, including recommendations, on the Charitable Bingo Operations Budget; consideration, public comment, and possible action, including recommendations, regarding the necessity for rulemaking pursuant to HB 2086; report from Mike Pitcock, Security Director, on security cases and consideration, public comment, and possible action, including recommendations on report; consideration, public comment, and possible action, including recommendations, regarding eight liners and phone card machines; consideration, public comment, and possible action, including recommendations, regarding the payment of sales tax on bingo products; consideration, public comment, and possible action, including recommendations, regarding future agenda items for future Bingo Advisory Committee; and adjournment.

For ADA assistance, call Worlanda Neal at 344-5120 at least two days prior to meeting.

Contact: Michelle Guerrero, P.O. Box 16630, Austin, Texas 78761, (512) 344-5113.

Filed: September 22, 1997, 12:54 p.m.

TRD-9712617



Monday, October 6, 1997, 8:30 a.m.

611 East Sixth Street, Grant Building, First Floor Auditorium

Austin

AGENDA:

According to the complete agenda, the Texas Lottery Commission will call the meeting to order; report by the Bingo Advisory Committee Chair and possible discussion and/or action based on the Chair's report; consideration of and possible action on BABN and Dittler Brothers, Inc. asset purchase agreement; consideration of and possible action, including adoption of amendments, on 16 TAC §402.567, concerning the Bingo Advisory Committee; consideration of and possible action on the Executive Director's review of State Officials' campaign donations and other related matters; consideration of and possible action on possible GTECH contract amendment regarding the proposal to acquire LEDs; status report on the lottery Operations and Services Request for Proposals; status report and possible discussion on the audit of the lottery operator; consideration of and possible action, including adoption, on the agency's internal audit charter; status report and possible discussion on the acquisition of a location for the Lottery headquarters; status report, possible discussion and possible action on the state audit report relating to the Texas Lottery Commission; consideration and possible action, including adoption on Chapters 1,6 and/or 8 of the Personnel Policy Manual; consideration and possible action on the Texas Lottery's FY 1998-1999 advertising program; status report, possible discussion and possible action including implementation on legislation; consideration and possible action on lottery prizewinner's educational seminars; Commission may meet in Executive Session; return to open session for further deliberation and possible action on any matter discussed in Executive Session; consideration of the status of possible entry of an order in any contested case if a proposal for decision has been received from the assigned administrative law judge and the time period has lapsed for the filing of exceptions and replies; report by the Executive Director and possible discussion and/or action on the agency's financial

status, budget and budget goals for FY 1998 and FY 1999, HUB performance, status of implementation of 16 TAC §401.369 and FTE status; report by the Charitable Bingo Operations Director and possible discussion and/or action on the licensing and audit status of the division and possible issues relating to the Bingo Advisory Committee; Texas Lottery Commission Employee service recognition; and adjournment.

For ADA assistance, call Michelle Guerrero at (512) 344-5113 at least two days prior to meeting.

Contact: Michelle Guerrero, P.O. Box 16630, Austin, Texas 78761, (512) 344-5113.

Filed: September 26, 1997, 3:18 p.m.

TRD-9712849



Texas State Board of Medical Examiners

Friday, October 3, 1997, 10:15 a.m.

333 Guadalupe Street, Tower 3, Suite 610

Austin

Hearings Division

AGENDA:

Termination Request, 10:15 a.m. — Barney Rubinstein, MD, Big Spring, Texas

Probation Appearance, 10:45 a.m. — Paris Bransford, MD, Pasadena, Texas

Probation Appearance, 11:00 a.m. — J. Jesus Diaz, MD, Houston, Texas

Probation Appearance, 11:00 a.m. — Frank Stuart Murphy, DO, Longview, Texas

Termination Request, 12:45 p.m. — Laura Langley, MD, Orange, Texas

Termination Request, 1:45 p.m. — Rafael Verduzco, MD, Sugar Land, Texas

Modification Request, 2:15 p.m. — James Michael Stanton, MD, Houston, Texas

Termination Request, 3:00 p.m. — Arthur William Kratz, DO, Dallas, Texas

Probation Appearance, 3:30 p.m. — Ramiro De Los Santos, MD, Eagle Pass, Texas

Probation Appearance, 3:30 p.m. — Bernice Anderson, DO, Port Aransas, Texas

Termination Request, 4:00 p.m. — Horace Burnard Halbert Jr, MD, Midway, Texas

Executive Session under Authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495B, §§2.07(B), and 2.09(o), Texas Revised Civil Statutes, Regarding Pending or Contemplated Litigation.

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, (512) 305-7016.

Filed: September 24, 1997, 2:19 p.m.

TRD-9712715



Texas Natural Resource Conservation Commission

Wednesday, October 1, 1997, 8:30 a.m.

Room 201S, Building E, 12100 Park 35 Circle

Austin

REVISED AGENDA:

The Commission will consider approving the following matters on the agenda: Executive Session.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: September 22, 1997, 12:20 p.m.

TRD-9712615



Thursday, October 2, 1997, 9:00 a.m.

Texas A&M University-Corpus Christi, Natural Resources Center, Conference Room 1003, 6300 Ocean Drive

Corpus Christi

AGENDA:

I. Call to Order/Introduction/Minutes.

II. Characterization Report Approval

III. FY 1998 Contractor Selection

IV. Regional Monitoring Strategy Goals and Objectives

V. Additional Items/Adjourn

Contact: Richard Volk, TAMU-CC, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 980-3420.

Filed: September 23, 1997, 11:10 p.m.

TRD-9712641



Thursday, October 2, 1997, 1:30 p.m.

Room 201S, Building E, 12100 Park 35 Circle

Austin

AGENDA:

This meeting is a work session for discussion between commissioners and staff. No public testimony or comment will be accepted except by invitation of the commission.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: September 24, 1997, 11:29 p.m.

TRD-9712704



Monday, October 20, 1997, 10:00 a.m.

1700 North Congress Avenue, Eleventh Floor Suite 1100

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by ONION CREEK WASTEWATER CORPORATION for a change in sewer rates effective September 1, 1997 for its service area located in Travis County, Texas. SOAH Docket Number 582-97-1589.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-3445.

Filed: September 26, 1997, 11:21 p.m.

TRD-9712817



Thursday, October 30, 1997, 9:00 a.m.

1700 North Congress Avenue, Eleventh Floor Suite 1100

Austin

AGENDA:

State Office of Administrative Hearings

SOAH Docket Number 582-97-1704; TNRCC Docket Number 97-0819-PWS-E; QUADVEST, INC.; A hearing before an Administrative Law Judge of the State Office of Administrative Hearings consider the Executive Director's preliminary report and petition mailed July 3, 1997, concerning assessing administrative penalties against and requiring certain action of Quadvest, Inc., for water code violations in Harris, Montgomery and Waller Counties, Texas. The hearing will allow Quadvest, Inc., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Quadvest, Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Quadvest, Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding. Legal Authority: Texas Health and Safety Code Chapter 341; the Administrative Procedures Act; 30 Texas Administrative Code Chapters 70, 80 and 290; and the Rules of Procedures of the Texas Natural Resource Conservation Commission and the State Office of Administrative Hearings.

Contact: Blas Coy, MC-103, P.O. Box 13087, Austin, Texas 78711-3087; (512) 239-6363.

Filed: September 26, 1997, 11:21 p.m.

TRD-9712848



Monday, November 3, 1997, 9:00 a.m.

1700 North Congress Avenue, Eleventh Floor Suite 1100, Stephen F. Austin Building

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket Number 582-97-1709; TNRCC Docket Number 97-0034-IHW-E; DJLJ CORPORATION Doing Business As TANK WASH USA, INC.; A hearing before an Administrative Law Judge of the State Office of Administrative Hearings to consider the Executive Director's preliminary report and petition mailed January 22, 1997, concerning assessing administrative penalties against and requiring certain action of DJLJ Corporation Doing Business As Tank Wash USA, Inc. for solid waste disposal act violations in Harris County, Texas. The hearing will allow DJLJ Corporation Doing Business As DBA Tank Wash USA, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford DJLJ Corporation Doing Business As Tank Wash USA, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. DJLJ Corporation Doing Business As Tank Wash USA, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding. Legal Authority: Solid Waste Disposal Act, Texas Health and Safety Code Chapter 361; the Administrative Procedures Act; 30 Texas Administrative Code Chapters 70, 80 and 335; 40 Code of Federal Regulations Chapters 262, 265, and 270; and the Rules of Procedures of the Texas Natural Resource Conservation Commission and the State Office of Administrative Hearings.

Contact: Blas Coy, MC-103, P.O. Box 13087, Austin, Texas 78711-3087; (512) 239-6363.

Filed: September 26, 1997, 4:15 p.m.

TRD-9712854



Tuesday, November 4, 1997, 9:00 a.m.

1700 North Congress Avenue, Eleventh Floor Suite 1100, Stephen F. Austin Building

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket Number 582-97-1708; TNRCC Docket Number 97-0058-AIR-E; TREVOR BOYCE ASSOCIATES INC.; A hearing before an Administrative Law Judge of the State Office of Administrative Hearings to consider the Executive Director's preliminary report and petition mailed July 17, 1997, concerning assessing administrative penalties against and requiring certain action of Trevor Boyce Associates Inc. for Texas Health and Safety Code violations in Liberty County, Texas. The hearing will allow Trevor Boyce Associates Inc., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Trevor Boyce Associates Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a dis-

covery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Trevor Boyce Associates Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding. Legal Authority: Texas Health and Safety Code Chapter 382; the Administrative Procedures Act; 30 Texas Administrative Code Chapters 70, 80, 115, and 116; and the Rules of Procedure of the Texas Natural Resource Conservation Commission and the State Office of Administrative Hearings.

Contact: Blas Coy, Mail Code 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363.

Filed: September 26, 1997, 3:49 p.m.

TRD-9712853

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Thursday, November 6, 1997, 9:00 a.m.

1700 North Congress Avenue, Eleventh Floor Suite 1100, Stephen F. Austin Building

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket Number 582-97-1705; TNRCC Docket Number 97-1452-PWS-E; MERLENE MIXSON, doing business as RIDGE RIVER WATER SYSTEMS; A hearing before an Administrative Law Judge of the State Office of Administrative Hearings to consider the Executive Director's preliminary report and petition mailed May 29, 1997, concerning assessing administrative penalties against and requiring certain action of Merlene Mixon, doing business as Ridge River Water Systems for health and safety code violations in Travis County, Texas. The hearing will allow Merlene Mixon, doing business as Ridge River Water Systems, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford , Merlene Mixon, doing business as Ridge River Water Systems, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Merlene Mixon, doing business as Ridge River Water Systems, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding. Legal Authority: Texas Health and Safety Code Chapter 341; the Administrative Procedures Act; 30 Texas Administrative Code Chapters 70, 80 and 290; 40 Code of Federal Regulations Chapters 262, 265, and 270; and the Rules of Procedures of the Texas Natural Resource Conservation Commission and the State Office of Administrative Hearings.

Contact: Blas Coy, MC-103, P.O. Box 13087, Austin, Texas 78711-3087; (512) 239-6363.

Filed: September 26, 1997, 3:42 p.m.

TRD-9712852

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Friday, November 7, 1997, 9:00 a.m.

1700 North Congress Avenue, Eleventh Floor Suite 1100, Stephen F. Austin Building

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket Number 582-97-1707; TNRCC Docket Number 97-0666-IHW-E; LONGVIEW REFINING ASSOCIATES, INC. ; A hearing before an Administrative law judge of the State Office of Administrative Hearings to consider the Executive Director's preliminary report and petition mailed July 14, 1997, concerning assessing administrative penalties against and requiring certain action of Longview Refining Associates, Inc. for Texas Health and Safety Code violations in Gregg County, Texas. The hearing will allow Longview Refining Associates, Inc., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford , Longview Refining Associates, Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Longview Refining Associates, Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding. Legal Authority: Texas Health and Safety Code Chapter 361; the Administrative Procedures Act; 30 Texas Administrative Code Chapters 70, 80 and 335; 40 Code of Federal Regulations Chapters 262, and 270; and the Rules of Procedures of the Texas Natural Resource Conservation Commission and the State Office of Administrative Hearings.

Contact: Blas Coy, MC-103, P.O. Box 13087, Austin, Texas 78711-3087; (512) 239-6363.

Filed: September 26, 1997, 3:36 p.m.

TRD-9712850

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Tuesday, November 11, 1997, 9:00 a.m.

1700 North Congress Avenue, Eleventh Floor Suite 1100, Stephen F. Austin Building

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket Number 582-97-1710; TNRCC Docket Number 97-0294-IHW-E; ROLLINS ENVIRONMENTAL SERVICES, INC. ; A hearing before an Administrative law judge of the State Office of Administrative Hearings to consider the Executive Director's preliminary report and petition mailed April 30, 1997, concerning assessing administrative penalties against and requiring certain action of Rollins Environmental Services, Inc.; solid waste disposal act violations in Harris County, Texas. The hearing will allow Rollins Environmental Services, Inc., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has

occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Longview Refining Associates, Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Longview Refining Associates, Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding. Legal Authority: Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361; the Administrative Procedures Act; 30 Texas Administrative Code Chapters 70, 80 and 335; 40 Code of Federal Regulations Chapters 262, and the Rules of Procedures of the Texas Natural Resource Conservation Commission and the State Office of Administrative Hearings.

Contact: Blas Coy, MC-103, P.O. Box 13087, Austin, Texas 78711-3087; (512) 239-6363.

Filed: September 26, 1997, 4:17 p.m.

TRD-9712855

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Monday, November 17, 1997, 9:00 a.m.

1700 North Congress Avenue, Eleventh Floor Suite 1100, Stephen F. Austin Building

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket Number 582-97-1711; TNRCC Docket Number 97-0592-IHW-E; BRITE- SOL SERVICES, INC.; A hearing before an Administrative law judge of the State Office of Administrative Hearings to consider the Executive Director's preliminary report and petition mailed June 27, 1997, concerning assessing administrative penalties against and requiring certain action of Brite-Sol Services, Inc.; for solid waste disposal act violations in Harris County, Texas. The hearing will allow Brite-Sol Services, Inc., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Brite-Sol Services, Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Brite-Sol Services, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding. Legal Authority: Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361; the Administrative Procedures Act; 30 Texas Administrative Code Chapters 70, 80 and 335; 40 Code of Federal Regulations Chapters 262, 265 and 270; and the Rules of Procedures of the Texas Natural Resource Conservation Commission and the State Office of Administrative Hearings.

Contact: Blas Coy, MC-103, P.O. Box 13087, Austin, Texas 78711-3087; (512) 239-6363.

Filed: September 26, 1997, 4:14 p.m.

TRD-9712857

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Tuesday, November 25, 1997, 7:00 p.m.

East Montgomery County Courthouse, 1035 South Highway 59

New Caney

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource conservation Commission by MCNICK RECYCLING, INC. for issuance of proposed Air Permit Number 31596 to authorize construction of a used oil filter processing facility location approximately 500 feet west of Highway 59 and approximately 600 feet north of Route Two, McCleskey Road, in Montgomery County, Texas. SOAH Docket Number 582-97-0716.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-3445.

Filed: September 26, 1997, 11:21 p.m.

TRD-9712818

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Texas Board of Physical Therapy Examiners

Friday, October 3, 1997, 9:30 a.m.

Arlington Marriott Hotel, 1500 Convention Center Drive

Arlington

Board

AGENDA:

I. Public Comment

II. Introduction of new board members

III. Election of board officers and committee appointments

IV. Appointment of representatives to the Executive Council of Physical Therapy and Occupational Therapy Examiners

V. Approval of Minutes of June 13, 1997 board meeting

VI. Committee Report

A. Investigation Committee

1. Review and possible action on Agreed Order numbers 97143, 97151, 97172, 97053, 97131, 97133, 97163

2. Review and possible action on case number 97075

3. Discussion of FY1997 investigative activities

B. Rules Committee

1. Review and possible adoption of changes to §329.1, regarding applications, as published in the July 22, 1997, Texas Register

2. Review and possible adoption of changes to §329.5, regarding foreign trained applicants, as published in the July 22, 1997, Texas Register

3. Review and possible adoption of changes to §343.3 referral requirements, as published in the July 22, 1997, Texas Register

4. Review and possible adoption of changes to §329.3, regarding temporary licenses (PTA) as published in the July 22, 1997, Texas Register

VII. Review and possible action on a board approved credentials evaluation checklist

VIII. Executive Director's Report

IX. Presiding Officer's Report

X. Discussion of future meeting dates and items for consideration

XI. Adjournment

Note: The Board reserves the right to go into executive session on any of the above agenda items.

Contact: John Maline, 333 Guadalupe, Suite 2-510, Austin, Texas (512) 305-6900.

Filed: September 24, 1997, 3:39 p.m.

TRD-9712723



Texas Office for Prevention of Developmental Disabilities

Wednesday, October 8, 1997, 1:00 p.m.

Capitol Extension, Room E2.010, Capitol Complex

Austin

Executive Committee

AGENDA:

Call to order

Roll Call

Welcome and Introductions

Minutes of July 1997 TOP Meeting

Introduction of New Consumer Advisory Members

Welcome of Children with Special Health Care Needs Advisory Members

Development of Long Range State Plan

Update of CDC Grant "On the Right Track"

Other Business

Adjourn

Contact: Jerry Ann Robinson, 4900 North Lamar, Austin, Texas 78751-2399, (512) 424-6042.

Filed: September 22, 1997, 12:20 p.m.

TRD-9712616



Texas Department of Public Safety

Monday, October 6, 1997, Noon.

DPS Headquarters, 5805 North Lamar

Austin

Public Safety Commission

AGENDA:

Approval of Minutes

Budget Matters

Personnel Matters

Pending and Contemplated Litigation

Miscellaneous and Other Unfinished Business

Public Comment

Administrative Rule on Acceptance of Out of State Commercial Vehicle Inspection Certification, 37 TAC, §§23.102, 23.101

Discharge Appeal Hearing of DPS Employee Gegetta Lynn Hamilton

Notice of Assistance: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired; readers, large print or braille, are requested to contact Dorothy Wright at (512) 453-3929, two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Dudley M. Thomas, 5805 North Lamar, Austin, Texas 78752, (512) 424-2000, extension 3700.

Filed: September 25, 1997, 9:10 a.m.

TRD-9712736



Monday, October 6, 1997, Noon.

DPS Headquarters, 5805 North Lamar

Austin

Public Safety Commission

REVISED AGENDA:

Approval of Minutes

Budget Matters

Personnel Matters

Pending and Contemplated Litigation

Real Estate Matters

Miscellaneous and Other Unfinished Business

Public Comment

Administrative Rule on Acceptance of Out of State Commercial Vehicle Inspection Certification, 37 TAC, §§23.102, 23.101

Discharge Appeal Hearing of DPS Employee Gegetta Lynn Hamilton

Continuation of Discharge Appeal Hearing of DPS Employee Marcus Hilton

Notice of Assistance: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired; readers, large print or braille, are requested to contact Dorothy Wright at (512) 453-3929, two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Dudley M. Thomas, 5805 North Lamar, Austin, Texas 78752, (512) 424-2000, extension 3700.

Filed: September 25, 1997, 10:28 a.m.

TRD-9712743



Public Utility Commission of Texas

Tuesday, September 30, 1997, 9:00 a.m.

Lt. Governor's Hearing Room, State Capitol

Austin

AGENDA:

The Public Utility Commissioners will meet with the Joint Interim Committee on the Use of Municipal Rights of Way, to participate in public testimony.

Contact: Amy Kelly, Room 905, Sam Houston Building, 201 East 14th Street, Austin, Texas 78711, (512) 463-2076.

Filed: September 22, 1997, 3:08 p.m.

TRD-9712621



Wednesday, October 1, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration and possible action regarding: Docket Numbers 17180, 15840, 15015, 17713, 16705, 17899, 14965, 17321, 17453, 17575, 17585 and 17692; Project Number 14908; Activities in wholesale electric power market; Electric industry restructuring; Project Number 18000, Informal Dispute Resolution; Docket Numbers 16189, 16196, 16226, 16285, 16290, 16455, 17065, 17579, 17587, 17781, 17775, 17146, 17390, 17628, 17638, 17663, 17666, 17681, 17685, 17699, 17708, 17706, 17755, and 17756; Project Numbers 17531, 17296, 17265, 15452, 16899, 16900, and 16901; Permanent Local Number Portability; Project Number 17620; Federal Telecommunications Act of 1996, including but not limited to FCC Docket Number CC-97-137 and other actions taken by the Federal Communications Commission; Activities in local telephone markets, including but not limited to correspondence and implementation of interconnection agreements approved by the Commission pursuant to PURA and FTA; Project Number 17308, Telecommunications and Electric Rulemaking and Project Agenda by Fiscal Year; Project Number 17709, Review of Agency Rules in Accordance with H.B. 1, Article IX, §167; Application for renewal of state certification for telecommunications relay services; Customer service issues, including but not limited to correspondence and complaint issues; Agency plans, priorities and budgets for the coming biennium, Project assignments, correspondence, staff reports, audit, agency administrative procedures, budget, fiscal matters and personnel policy; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7308.

Filed: September 23, 1997, 2:52 p.m.

TRD-9712655



Monday, October 6, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

Office of Policy Development

AGENDA:

An Arbitration Hearing is scheduled for the above date and time in Docket Number 16189.

Petition of MFS COMMUNICATIONS COMPANY, INC. For Arbitration of Pricing of Unbundled Loops.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7308.

Filed: September 23, 1997, 3:17 p.m.

TRD-9712662



Monday, October 6, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

Office of Policy Development

AGENDA:

An Arbitration Hearing is scheduled for the above date and time in Docket Number 16196:

Petition of TELEPORT COMMUNICATIONS GROUP, INC. For Arbitration to Establish an Interconnection Agreement.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7308.

Filed: September 23, 1997, 3:18 p.m.

TRD-9712663



Monday, October 6, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

Office of Policy Development

AGENDA:

An Arbitration Hearing is scheduled for the above date and time in Docket Number 16226:

Petition of AT&T COMMUNICATIONS OF THE SOUTHWEST, INC. For Arbitration to Establish an Interconnection Agreement Between AT&T and SOUTHWESTERN BELL TELEPHONE COMPANY.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7308.

Filed: September 23, 1997, 3:18 p.m.

TRD-9712664



Monday, October 6, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin
Office of Policy Development

AGENDA:

An Arbitration Hearing is scheduled for the above date and time in Docket Number 16285:

PETITION OF MCI TELECOMMUNICATION CORPORATION AND ITS AFFILIATE, MCIMETRO ACCESS TRANSMISSION SERVICES, INC. For Arbitration and Request for Mediation Under the Federal Telecommunications Act of 1996.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7308.

Filed: September 23, 1997, 3:18 p.m.

TRD-9712665



Monday, October 6, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

Office of Policy Development

AGENDA:

An Arbitration Hearing is scheduled for the above date and time in Docket Number 16290:

PETITION OF AMERICAN COMMUNICATIONS SERVICES, INC. AND ITS LOCAL EXCHANGE OPERATING SUBSIDIARIES For Arbitration with SOUTHWESTERN BELL TELEPHONE COMPANY Pursuant to the Telecommunications Act of 1996.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7308.

Filed: September 23, 1997, 3:18 p.m.

TRD-9712666



Monday, October 6, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

Office of Policy Development

AGENDA:

An Arbitration Hearing is scheduled for the above date and time in Docket Number 16455:

PETITION OF SPRINT COMMUNICATIONS COMPANY L.P. For Arbitration of Interconnection Rates, Terms, Conditions, and Prices From SOUTHWESTERN BELL TELEPHONE COMPANY.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7308.

Filed: September 23, 1997, 3:18 p.m.

TRD-9712667



Monday, October 6, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

Office of Policy Development

AGENDA:

An Arbitration Hearing is scheduled for the above date and time in Docket Number 17065:

PETITION OF BROOKS FIBER COMMUNICATIONS OF TEXAS, INC. FOR ARBITRATION WITH SOUTHWESTERN BELL TELEPHONE COMPANY.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7308.

Filed: September 23, 1997, 3:18 p.m.

TRD-9712668



Monday, October 6, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

Office of Policy Development

AGENDA:

An Arbitration Hearing is scheduled for the above date and time in Docket Number 17579:

APPLICATION OF AT&T COMMUNICATIONS OF THE SOUTHWEST, INC. FOR COMPULSORY ARBITRATION OF FURTHER ISSUES TO ESTABLISH AN INTERCONNECTION AGREEMENT BETWEEN AT&T AND SOUTHWESTERN BELL TELEPHONE COMPANY.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7308.

Filed: September 23, 1997, 3:18 p.m.

TRD-9712669



Monday, October 6, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

Office of Policy Development

AGENDA:

An Arbitration Hearing is scheduled for the above date and time in Docket Number 17587:

REQUEST OF MCI TELECOMMUNICATIONS CORPORATION AND ITS AFFILIATE, MCIMETRO ACCESS TRANSMISSION SERVICES, INC. FOR CONTINUING ARBITRATION OF CERTAIN UNRESOLVED PROVISIONS OF THE INTERCONNECTION AGREEMENT BETWEEN MCIM AND SOUTHWESTERN BELL TELEPHONE COMPANY.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7308.

Filed: September 23, 1997, 3:18 p.m.

TRD-9712670

Monday, October 6, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

Office of Policy Development

AGENDA:

An Arbitration Hearing is scheduled for the above date and time in Docket Number 17781:

COMPLAINT OF MCI AGAINST SWB FOR VIOLATION OF COMMISSION ORDER IN DOCKET NUMBER 16285, REGARDING CABS ORDERING AND BILLING PROCESSING.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7308.

Filed: September 23, 1997, 3:18 p.m.

TRD-9712671

Railroad Commission of Texas

Tuesday, September 30, 1997, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

REVISED AGENDA:

The Railroad Commission of Texas will consider and may act on the following items:

1. Review and approval of the Biennial Operating Plan for submission to the Department of Information Resources.
2. Consideration of responses to Requests for Offers on Year 2000 contract programming services which were approved on September 16, 1997 and action thereon as may be appropriate.
3. Review of Fiscal 1988 workplans for the ITS Division and action thereon as may be appropriate.
4. Approval of extension of short-term procurement for computer programming services for Year 2000 conversion project through the end of October 1997 or until such time as the Year 2000 conversion contract programming services which were approved on September 16, 1997 are in place.

Contact: Lindil C. Fowler, Jr., P.O. Box 12967, Austin, Texas 78711-6827, (512) 463-7033.

Filed: September 22, 1997, 3:57 p.m.

TRD-9712633

Tuesday, September 30, 1997, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

EMERGENCY REVISED AGENDA:

The Railroad Commission of Texas will consider and may act on the following items:

1. Application by Texas Municipal Power Agency for Acceptance of Collateral Bond with Extension to Letter of Credit securing Collateral bond, Permit Number 26C, Gibbons Creek Lignite Mine, Grimes County, Texas.

2. Application by Texas Municipal Power Agency for Acceptance of Collateral Bond with Extension to Letter of Credit securing Collateral Bond, Permit Number 38C, Gibbons Lignite Mine V. Grimes County, Texas.

REASON FOR EMERGENCY: Presentation of these items is necessary to protect the public by ensuring the continuation of the financial ability to secure and reclaim mined areas within the state. Without immediate Commission action these items will expire on September 30, 1997.

Contact: Marcy Spraggins, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6752.

Filed: September 23, 1997, 4:29 p.m.

TRD-9712674

Friday, October 3, 1997, 9:30 a.m.

Hilton Hotel Southwest, 6780 Southwest Freeway, Southwest Grand Ballroom, Lobby Level

Houston

AGENDA:

The Commission will hear public comment regarding safety and service of rail providers in Texas.

9:30 a.m. — Call to order by Chairman Charles R. Matthews; opening remarks by Chairman Matthews, Commissioner Barry Williamson, and Commissioner Carole Keeton Rylander.

9:45 a.m. — Speakers' comments to the Commission

3:45 – 4:00 p.m. — Closing remarks by Chairman Matthews, Commissioner Williamson, and Commissioner Rylander

4:00 p.m. — Adjournment by Chairman Matthews (time will depend on number of speakers).

The Commission may also take a break for lunch, but the time and length will be determined by the number of speakers.

Contact: Jerry Martin, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7001.

Filed: September 25, 1997, 1:58 p.m.

TRD-9712767

Tuesday, October 7, 1997, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or

more have elapsed from the date the hearing was closed or from the date the transcript was received.

Contact: Lindil C. Fowler, Jr., P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7033.

Filed: September 26, 1997, 4:37 p.m.

TRD-9712856



Recycling Market Development Board

Wednesday, October 8, 1997, 8:00 a.m.

Austin Hyatt Regency-Foothills II, 208 Barton Springs Road

Austin

AGENDA:

I. Call to Order-Passing of Chair to Mr. William G. Burnett, Executive Director, Texas Department of Transportation

II. Announcements

III. Reading of Minutes of June 26, 1997 Meeting

IV. Old Business: Report on State Purchaser's Buy Recycled Training

V. New Business:

1) Consideration of RMDB action plan for fiscal year 1998.

2) Report on "State of Texas: Evaluation of Procurement and Reporting Practices for Environmentally Preferable Products."

3) Report on TNRCC marketing initiatives for scrap tires.

4) Consideration of resolution recognizing the Recycling Coalition of Texas and the Texas Corporate Recycling Council for their unified efforts in "closing the loop" and in developing markets for recyclables in Texas.

5) Report on TNRCC- Habitat for Humanity Recycled Content Home Project.

6) Report on Texas Recycles Day and America Recycles Day.

VI. Public Comment

VII. Adjourn.

Contact: Terry Robinson, 1700 North Congress Avenue, Room 620, Austin, Texas 78701, (512) 463-5344.

Filed: September 24, 1997, 9:56 a.m.

TRD-9712684



Texas Municipal Retirement System

Friday, October 17, 1997, 9:00 a.m.

Doubletree Guest Suites Hotel, 303 West 15th Street

Austin

Advisory Committee on Retirement Matters

AGENDA:

To hear and approve Minutes of the regular October 25, 1996 meeting and joint meeting with the Board of Trustees on May 23, 1997;

review functions and role of committee; orientation on TMRS issues, initiatives; review benefit changes resulting from 1997 legislation.

Contact: Gary W. Anderson, P.O. Box 149153, Austin, Texas 78714-9153, (512) 476-7577.

Filed: September 24, 1997, 11:53 a.m.

TRD-9712705



Secretary of State

Monday, October 6, 1997, 10:00 a.m.

Capitol Extension, Room E1.030

Austin

Election Advisory Committee

AGENDA:

Welcoming Remarks; roll call and introduction of members; appointment of elections advisory committee chair and vice-chair; introductory remarks; overview of secretary of state election night returns system; overview of process/introduction of key personnel; features of the system; charges for election night returns services; approval of operations manual; designation of one or more of elections advisory committee members to be present on election night; closing remarks.

Contact: Kim Sutton, P.O. Box 12060, Austin, Texas 78711, (512) 463-5650.

Filed: September 23, 1997, 11:25 a.m.

TRD-9712647



State Securities Board

Wednesday, October 8, 1997, 9:00 a.m., Rescheduled from September 12, 1997.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

Administrative Hearing

AGENDA:

A hearing will be held for the purpose of determining whether the agent registration of Lawrence Wade Dueitt should be revoked.

Contact: David Grauer, 200 East 10th Street, Fifth Floor, Austin, Texas 78701, (512) 305-8392.

Filed: September 24, 1997, 10:51 a.m.

TRD-9712695



Monday, October 27, 1997, 9:00 a.m., Rescheduled from August 25, 1997.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

Administrative Hearing

AGENDA:

A hearing will be held to determine whether cease and desist, revocation, fine and denial or registration orders will be issued against fifteen respondents in a previously filed case, IN THE MATTER OF THE EXCHANGE HOUSE, INC., et al., State Office of Administrative Hearing Docket Number 312-97-0760.

Contact: David Grauer, 200 East 10th Street, Fifth Floor, Austin, Texas 78701, (512) 305-8392.

Filed: September 25, 1997, 2:21 p.m.

TRD-9712770



Structural Pest Control Board

Tuesday, October 7, 1997, 9:00 a.m.

Joe C. Thompson Conference Center, 2405 East Campus Drive, Room 3.120

Austin

Regular Board Meeting

AGENDA:

I. Approval of Board Minutes of August 12, 1997.

II. Public Comment.

III. Consider Proposals for Decision on Docket Number 472-97-0513, Steve Wickersham dba Reliant Termite and Pest; Docket Number 472-97-1121, Edwin Earl England; Docket Number 472-97-1123, Anthony Walker dba A+ Pest Control; Docket Number 472-97-1126, Nosa A. Edokpayi dba Gold N Eagle Pest Management; Docket Number 472-97-1128, Gregory Lyons dba Payless Pest Control; and Docket Number 472-97-1129, Henry Toney dba Texas Tree Service

IV. Committee Report on Non-Pesticide Use.

V. Committee Report from Termite Treatment Committee to Include Baits.

VI. Discussion of Possible Amendments to § 591.21, Definitions, 599.4, Termite Treatment Disclosure Documents and §599.6, Real Estate Inspection Reports.

VII. Review Agreed Administrative Penalties and Consent Agreements.

VIII. Executive Director's Report.

IX. Board Meeting Scheduled for December 9, 1997 and February 10, 1998. Proposed Board Meeting Dates for Remainder of 1998-April 30, 1998, June 18, 1998, September 10, 1998 and December 1, 1998.

Contact: Benny Mathis, 1106 Clayton Lane, Suite 100 LW, Austin, Texas 78723, (512) 451-7200.

Filed: September 25, 1997, 4:30 p.m.

TRD-9712801



Texas State Technical College System

Tuesday, September 30, 1997, 9:00 a.m.

1414 Colorado Street

Austin

Board of Regents Search Committee

AGENDA:

The Board of Regents Search Committee will meet and take possible action on recommendations, if any, to the full Board of Regents regarding Search Committee Meeting.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (254) 867-3964.

Filed: September 25, 1997, 8:07 a.m.

TRD-9712732



Tuesday, September 30, 1997, 9:02 a.m.

1414 Colorado Street

Austin

Board of Regents Search Committee Closed Meeting

AGENDA:

Closed meeting for the specific purpose provided for in §§551.074 and 551.075: Discuss Chancellor search process and review applications for the position.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (254) 867-3964.

Filed: September 25, 1997, 8:07 a.m.

TRD-9712733



The University of Houston System

Monday, October 6, 1997, 1:30 p.m.

Conference Room One, 1600 Smith, Suite 3400, UH System Offices Houston

Board of Regents-Variou Committees

AGENDA:

Committees/Subcommittees

Academic/Student Affairs

Constituent/External Affairs

Asset Management

Facilities Planning/Physical Plant

Compensation/Human Resources

Administration/Finance

Risk Management

Executive

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: September 29, 1997, 10:31 a.m.

TRD-9712900



The University of Texas at Austin

Wednesday, October 1, 1997, 1:00 p.m. (Executive Session)

21st and San Jacinto, Ex-Students' Association Building (Legends)

Austin

Intercollegiate Athletics for Men

AGENDA:

Convene into Open Session, Recess into Executive Session, Reconvene in Open Session, Approve Minutes of August 7, 1997, Items from Executive Session, Longhorn Foundation, Major Gifts and Planned Giving, Awards, Schedule/Schedule Changes, Tickets/Ticket Policy, New Business, Old Business and Adjourn.

Contact: Betty Corley, P.O. Box 7399, Austin, Texas 78713, (512) 471-5757.

Filed: September 25, 1997, 2:03 p.m.

TRD-9712769

Texas Board of Veterinary Medical Examiners

Thursday-Friday, October 2-3, 1997, 8:30 a.m.

Tower Two, Room 225, William P. Hobby Building, 333 Guadalupe Street

Austin

Board

REVISED AGENDA:

The Board will be taking action on Agreed Orders in disciplinary cases listed on the complete agenda as filed with the Texas Register. The Board will take action on those rules listed on the agenda. The Board will also consider the September Exam Results, elect officers, appoint April Examination Committees, and other items reflected on the attached agenda. The Board may go into executive session to discuss contemplated and pending litigation, and the responsibilities of the Executive Director. In addition, the Board will discuss and possibly take action on law suits to be brought under the Veterinary Licensing Act, §22, relating to corporate purchase of the assets of a veterinary practice.

The revised agenda is being filed to include the discussion and possible action on law suits to be brought under the Veterinary Licensing Act, relating to corporate purchase of the assets of veterinary practices. Other changes include the removal of the continued status on two docketed cases reflected on the agenda. Additional revisions include clarifying which adopted rules are new and which are amendments to existing rules. Under proposed rules, the rules to be repealed and the ones to be amended have also been specified. Under Executive Director's Report, an update on two docketed cases under appeal have been removed.

Persons requiring reasonable accommodations are requested to contact Judy Smith, 333 Guadalupe, #2-330, Austin, Texas 78701-3998, (512) 305-7555 or TDD 1-800-735-2989 within 72 hours of the meeting to make appropriate arrangements.

Contact: Judy Smith, 333 Guadalupe, #2-330, Austin, Texas 78701-3998, (512) 305-7555.

Filed: September 25, 1997, 3:37 p.m.

TRD-9712794

Texas Workforce Commission

Tuesday, September 30, 1997, 9:00 a.m.

101 East 15th Street

Austin

AGENDA:

Discussion, consideration and possible action relating to: (1) integration of eligibility determination and service delivery relative to House Bill 2777; (2) proposed incentive and sanction rule for local workforce boards; (3) potential and pending applications for certification of local workforce development boards; (4) recommendations to TCWEC of operations plans of local workforce development boards; (5) approval of local workforce board or private industry council nominees; (6) acceptance of donations of child care matching funds and (7) Employment and Training state plan. Discussion regarding Revision of rules related to the TANF employment program and rules related to Full Employment Pilot Project; EXECUTIVE SESSION pursuant to Government Code §551.071(1) concerning the pending litigation of the Texas AFL-CIO v. TWC; §551.071(2) concerning all matters identified in this agenda where the Commissioners seek the advice of its attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and to Discuss the Open Meetings Act and Administrative Procedures Act; Actions, if any, resulting from executive session; Consideration and action on continuing jurisdiction and reconsideration of unemployment compensation cases, and higher level appeals in unemployment compensation cases on Docket 40; Consideration and adoption on hearing notices in drug cases, of policies on the adoption of precedent cases and revision of precedent manual; Discussion regarding standards of proof in unemployment benefits cases involving drug testing; and set date of next meeting.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, (512) 463-7833.

Filed: September 22, 1997, 3:57 p.m.

TRD-9712634

Regional Meetings

Meetings filed September 22, 1997

Austin-Travis County MHMR Center, Executive Committee, met at 1430 Collier Street, Executive Conference Room, Austin, September 25, 1997 at 4:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440-4031. TRD-9712625.

Austin-Travis County MHMR Center, Board of Trustees, met at 1430 Collier Street, Board Room, Austin, September 25, 1997 at 5:00 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440-4031. TRD-9712626.

Brazos Valley Workforce Development Board, met at 1905 South Texas Avenue, Bryan, September 25, 1997, at 4:00 p.m. Information may be obtained from Dr. Dee Bonorden, 900 Wheelock, Hearne, Texas 77859, (409) 279-3200, fax: (409) 279-3631. TRD-9712618.

Harris County Appraisal District, Appraisal Review Board, met at 2800 North Loop West, Eighth Floor, Houston, September 26, 1997 at 8:00 a.m. Information may be obtained from Bob Gee, 2800 North Loop West, Houston, Texas 77092, (713) 957-5222. TRD-9712605.

Lamb County Appraisal District, Board of Directors, will meet at 331 LFD Drive, Littlefield, October 9, 1997 at 6:00 p.m. Information may be obtained from Vaughn E. McKee, P.O. Box 950, Littlefield, Texas 79339-0950. TRD-9712619.

Meetings filed September 23, 1997

Dallas Area Rapid Transit, Construction Cost Ad Hoc Committee, met at 1401 Pacific Avenue, Conference Room C, First Floor, Dallas, September 26, 1997 at 11:00 a.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, TRD-9712639.

Dallas Area Rapid Transit, Legislative Ad Hoc Committee, met at 1401 Pacific Avenue, Conference Room B, First Floor, Dallas, September 26, 1997 at 2:00 p.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9712643.

Deep East Texas Council of Governments, Grants Application Review/Transportation Committee, met at Woodville Inn, 201 North Magnolia, Woodville, September 25, 1997 at 11:00 a.m. Information may be obtained from Andy Phillips, 274 East Lamar Street, Jasper, Texas 75971, (409) 384-5704. TRD-9712673.

Harris County Appraisal, Board of Directors, met at 2800 North Loop West, Eighth Floor, Houston, September 26, 1997 at 1:30 p.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291. TRD-9712648.

North Texas Tollway Authority, Budget Committee, met at 3015 Raleigh Street, Dallas, September 26, 1997 at 1:00 p.m. Information may be obtained from Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200. TRD-9712638.

Meetings filed September 24, 1997

Coryell County Appraisal District, Board of Directors, met at 107 North Seventh, Gatesville, September 30, 1997 at 5:00 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (254) 865-6593. TRD-9712691.

Coryell County Appraisal District, Board of Directors, met at 107 North Seventh, Gatesville, September 30, 1997 at 6:00 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (254) 865-6593. TRD-9712693.

Dallas Central Appraisal District, Board of Directors' Regular Meeting, met at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, October 1, 1997 at 7:30 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9712713.

Education Service Center, Region VII, Board of Directors, met with revised agenda, at 440 Highway 79 South, Henderson, September 25, 1997, at Noon, Information may be obtained from Eddie J. Little, 818 East Main Street, Kilgore, Texas 75662, (903) 984-3071. TRD-9712699.

Edwards Aquifer Authority, Permits Committee, met at 1615 North St. Mary's Street, San Antonio, September 30, 1997 at 5:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St.

Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9712724.

Edwards Aquifer Authority, Legal Committee, will meet at 1615 North St. Mary's Street, San Antonio, October 6, 1997 at 9:00 a.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9712720.

Edwards Aquifer Authority, Executive Committee, will meet at 1615 North St. Mary's Street, San Antonio, October 6, 1997 at Noon. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9712721.

Edwards Aquifer Authority, Joint Meeting of the Research and Technology Committee and the Aquifer Management Planning Committee, will meet at 1615 North St. Mary's Street, San Antonio, October 6, 1997 at 2:00 p.m.. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9712729.

Grayson Appraisal District, Board of Directors, met at 205 North Travis, Sherman, September 29, 1997 at 5:15 p.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9712711.

North Texas Tollway Authority, met at Arlington Marriott Hotel, 1500 Convention Center Drive, Arlington, September 29, 1997 at 9:30 a.m. Information may be obtained from Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200. TRD-9712680.

Panhandle Regional Planning Commission, Board of Directors, met at Tascosa County Club, North Western Street, Amarillo, October 2, 1997, 3:30 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105, (806) 372-3381. TRD-9712726.

Trinity River Authority of Texas, Central Regional Wastewater System Right-of-Way Committee, met at 5300 South Collins Street, Arlington, September 30, 1997 at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9712712.

Meetings filed September 25, 1997

East Texas Council of Governments, CEO Board of Directors, met at 1306 Houston Street, Kilgore, October 1, 1997 at 11:30 a.m. Information may be obtained from Glynn knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9712773.

Education Service Center, Region 18, Board of Directors, met at 2811 LaForce Boulevard, Midland, October 2, 1997 at 7:00 p.m. Information may be obtained from Mr. Bryan LaBeff, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380. TRD-9712774.

Edwards Aquifer Authority, Permits Committee, met at 1615 North St. Mary's Street, San Antonio, September 30, 1997, at 5:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9712768.

Hays County Appraisal District, Appraisal Review Board, met at 21001 North IH35, Kyle, September 30, 1997, 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH35, Kyle, Texas 78640, (512) 268-2522. TRD-9712795.

Kempner Water Supply Corporation, Board of Directors, met at Highway 190, Kempner Water Supply Corporation, Kempner, October 2, 1997 at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9712734.

Rockwall County Central Appraisal District, Board of Directors, met at 106 North San Jacinto, Rockwall, September 30, 1997 at 5:00 p.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (972) 771-2034. TRD-9712771.

San Jacinto River Authority, Board of Directors, met at 2301 North Millbend Drive, Woodlands, October 2, 1997 at 8:00 a.m. Information may be obtained from James R. Adams, or Ruby Shiver, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9712772.

Shackelford Water Supply Corporation, Director's Meeting, met at Fort Griffin Restaurant, Highway 180, Albany, October 1, 1997 at Noon. Information may be obtained from Gaynell Perrins, Box 11, Albany, Texas 76430, (940) 345-6868 or (915) 762-2575. TRD-9712758.

Tarrant Appraisal District, Appraisal Review Board, will meet October 15 and 16, 1997, at 8:00 a.m. Information may be obtained from Linda G. Smith, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9712775.

Texas Municipal Power Agency ("TMPA"), Board of Directors Special Meeting, met at Holiday Inn Select LBJ Northeast, Cottonwood Room, 11350 LBJ Freeway at South Jupiter, Dallas, October 1, 1997 at 10:30 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (904) 873-1131. TRD-9712744.

Trinity River Authority of Texas, Executive Committee, met at 5300 South Collins Street, Arlington, October 2, 1997 at 11:00 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9712735.

Meetings filed September 26, 1997

Angelina and Neches River Authority, ANRA Board of Directors, met at 210 Lufkin Avenue, Board Meeting Room, October 1, 1997 at 11:00 a.m. Information may be obtained from Gary L. Neighbors, P.O. Box 387, Lufkin, Texas 75901, (409) 632-7795, fax: (409) 632-2564. TRD-9712851.

Brazos River Authority, Administration and Audit Committee Board of Directors, will meet at 4400 Cobbs Drive, Waco, October 6, 1997 at 9:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-07555, (254) 776-1441. TRD-9712836.

Brazos River Authority, Water Utilization Committee Board of Directors, will meet at 4400 Cobbs Drive, Waco, October 6, 1997 at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 7671407555, (254) 776-1441. TRD-9712837.

Canadian River Municipal Water Authority, Board, will meet at 2902 West Fourth Street, Plainview, October 8, 1997 at 10:30 a.m. Information may be obtained from John Williams, P.O. Box 99, Sanford, Texas 79078, (806) 865-3325. TRD-9712820.

Dallas Area Rapid Transit, Audit Committee, met at 1401 Pacific Avenue, Conference Room B, First Floor, Dallas, September 30, 1997 at 11:00 a.m. Information may be obtained from Paula Bailey,

DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9712831.

Dallas Area Rapid Transit, Committee of the Whole, met at 1401 Pacific Avenue, Conference Room C, First Floor, Dallas, September 30, 1997 at 1:00 p.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9712833.

Dallas Area Rapid Transit, Board of Directors, met at 1401 Pacific Avenue, Board Room, First Floor, Dallas, September 30, 1997 at 6:30 p.m. Information may be obtained from Paula Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9712832.

Education Service Center, Region IX, Board of Directors, met at 301 Loop 11, Wichita Falls, September 30, 1997, Noon. Information may be obtained from Dr. Ron Preston, 301 Loop 11, Wichita Falls, Texas 76305, (940) 322-6928. TRD-9712815.

Gray County Appraisal District, Board of Directors, met at 815 North Sumner, Pampa, October 2, 1997 at 7:30 a.m. Information may be obtained from Jennifer Read, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9712834.

Johnson County Central Appraisal District, Appraisal Review Board, met at 109 North Main, ARB Conference Room, Cleburne, September 30 and October 1-2, 1997 at 9:00 a.m. Information may be obtained from Don Gilmore, 109 West Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9712835.

Riceland Regional Mental Health Authority, Board of Trustees, met at 3007 North Richmond Road, Wharton, October 2, 1997 at 9:00 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488 (409) 532-3098. TRD-9712807.

San Antonio-Bexar County Metropolitan Planning Organization, Bicycle Mobility Task Force, met at "B" Room, Municipal Plaza building, 114 West Commerce, San Antonio, October 1, 1997, at 4:00 p.m. Information may be obtained from Scott Ericksonelle, 603 Navarro, Suite 904, San Antonio, Texas 78205, (210) 227-8651. TRD-9712804.

San Antonio-Bexar County Metropolitan Planning Organization, Technical Advisory Committee, met at Fourth Floor Conference Room, Bexar County Public Works, 233 North Pecos, San Antonio, October 3, 1997, at 1:30 p.m. Information may be obtained from Charlotte Roszelle, 603 Navarro, Suite 904, San Antonio, Texas 78205, (210) 227-8651. TRD-9712803.

Stephens County Rural Water Supply Corporation, Regular monthly meeting, met at 206 FM 3099, Breckenridge, October 2, 1997, at 7:00 p.m. Information may be obtained from Mary Barton, P.O. Box 1621, Breckenridge, Texas 76424, (254) 559-6180. TRD-9712816.

West Central Texas Workforce Development Board will meet at 1025 EN 10th Street, Abilene, October 15, 1997 at 10:30 a.m. Information may be obtained from Mary Ross, 1025 EN 10th Street, Abilene, Texas 79601, (915) 672-8544. TRD-9712840.

Meetings filed September 29, 1997

Bluebonnet Trails Community MHMR Center, Board of Trustees, met at Interface Industries Recycling Center, 510 Industrial Boulevard, Marble Falls, October 2, 1997 at 4:00 p.m. Information may be obtained from Vicki Risley, 15800 Highway 620 North, Austin, Texas 78717, (512) 244-8335. TRD-9712882.

Central Texas Economic Development District, Board of Directors Meeting, will meet at Clifton Armory, Clifton Municipal Park, Clifton, October 16, 1997 at 8:00 p.m. Information may be obtained from Bruce Gaines, P.O. Box 154118, Waco, Texas 76715, (254) 799-0258. TRD-9712913.

Kempner Water Supply Corporation, Revised Agenda, met at Kempner Water Supply Corporation Offices, Highway 190, Kempner, October 2, 1997 at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9712876.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Request for Proposals

Pursuant to the Texas Agriculture Code, §12.002, and §12.007 and the General Appropriations Act, Acts 1995, 74th Legislature, Regular Session, Chapter 1063, at 5821-5826, the Texas Department of Agriculture (the department) is authorized to contract with producer organizations to provide statewide integrated pest management (IPM) programs.

The department has entered into a cooperative agreement with Texas Pest Management Association (the association) to administer the department's IPM grant program. The association, through the department, hereby requests proposals for projects for the period from January 1, 1998, through December 31, 1998, that use and expand the use of integrated pest management in agriculture. A total of \$170,000 will be awarded, with no more than \$15,000 being awarded per grantee.

The proposed projects should be for research that relates to IPM development, the demonstration of IPM principles and technology, the establishment of educational programs to expand the use of biologically intensive IPM, and the implementation of and carrying out of biologically intensive IPM programs for farmer/rancher groups. Proposals must be submitted by non-profit producer, educational, or research organizations involved in integrated pest management programs. Joint efforts between public and private entities are encouraged. Proposals involving research other than IPM implementation research and proposals for chemical pesticides efficacy testing are not eligible for grant funds.

Preference will be given to: proposals that emphasize the final development of new, previously untested technologies; proposals that compare different IPM strategies; proposals that implement new IPM tactics, strategies or components of IPM systems; proposals that seek implementation of IPM practices in Texas counties where such practices have not been used; proposals which demonstrate economic benefits for Texas; proposals which implement IPM in non-traditional commodities.

Each proposal must include the following: a project summary and rationale/justification, the name, address, and phone number of the principal investigator, project objectives, project work plan, description of the anticipated impact on agriculture, and a detailed project budget. The entire proposal may not exceed six pages, including attachments. Please include any matching funding that the project has or has applied for this project. Please send one original proposal with ten additional copies. All approved projects must be completed by December 31, 1998. Upon completion of the project, a project report will be due within four weeks. The quality of this report may be used to evaluate further funding requests. All awards will be subject to audit.

Proposals should be submitted to Mike Wallace, Executive Director, Texas Pest Management Association, 8000 Centre Park Drive, Suite 390, Austin, Texas 78754. Mr. Wallace may be contacted by phone at (512) 834-8762 or by fax at (512) 339-6302 for additional information about preparing the proposal. Proposals must be received no later than 5:00 p.m., November 24, 1997.

All proposals will be evaluated by a proposal review committee made up of persons knowledgeable in IPM programs and practices, both scientists and non-scientists. Proposals will be evaluated based on the requirements set forth above. The announcement of the grant awards will be made by December 20, 1997.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712888

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Filed: September 29, 1997



Texas Commission for the Blind

Request for Proposal

Pat D. Westbrook, Executive Director of the Texas Commission for the Blind, announces the availability of funds for contracting with external entities (organizations or individuals) to provide outreach,

identification and referral of potentially eligible consumers of vocational rehabilitation services, information and referral, and to facilitate the delivery of vocational rehabilitation services to migratory agricultural and seasonal farmworkers who are blind or severely visually impaired and interested in maintaining or seeking employment.

Provider(s) are being sought to address unmet needs in the Harlingen area: Cameron, Willacy, Starr and Hidalgo Counties.

The Commission's primary objective is to increase the use of vocational rehabilitation services that enable migratory agricultural or seasonal farmworkers who are blind or severely visually impaired to maintain or seek employment. Services will be provided in coordination with Commission staff, who will retain responsibility for eligibility decisions, service plan development, use of agency funds, and coordination of services, including acquisition of adaptive devices. Providers will network with existing farmworker service agencies, travel to farmworker communities and identify potential recipients of vocational rehabilitation services. Providers will establish relationships with farmworker communities to coordinate and facilitate services such as:

- Initial vision screening to determine potential eligibility for vocational rehabilitation service.
- Vision screening and related diagnostics resulting in medical diagnosis of the visual disability related to employment.
- Diabetes screening and related services for the consumer and family members.
- Coordination of or providing transportation related to screening and vocational rehabilitation services.
- Coordination with the consumer and vocational rehabilitation staff to assure that the consumer understands what services are available and being provided.

Providers will also assist consumers with information and referral needs, such as housing, nutrition, general health (diabetes management), transportation, and financial matters.

Additional preference will be given to providers who can provide the following services: - Vision services, including counseling and guidance, low vision referral and follow-up, assistance in coordination of restoration services, and arranging diagnostic and evaluation services. - Related services, including recommending adaptive aids, advocacy, and transportation.

Service providers must be individuals (who may or may not be part of an organization) with demonstrated skills in providing case management services, preferably with experience in "hands-on" services to persons who are migratory or seasonal farmworkers or who have been migratory or seasonal farmworkers within three years of the onset of visual losses. Other requirements include a college degree and good oral and writing skills. Fluency in the language of the migrant/farmworker community is required.

TARGETED POPULATION. Consumers to be served by providers are persons who are totally blind or severely visually impaired who are or were engaged in migratory agricultural or seasonal farmwork within three years of the onset of their visual condition and who potentially meet the basic requirements for receiving services from the Commission's Vocational Rehabilitation Program.

PERIOD COVERED BY CONTRACTS. It is estimated that services will begin in December 1997 after contracts are awarded. Contracts will run through the state fiscal year that ends August 31, 1999.

WHO IS ELIGIBLE TO APPLY. Organizations and individuals that can provide outreach and related services to migratory and seasonal farmworkers and their family members may apply.

APPLICATION PROCEDURES. All applications must be postmarked no later than November 17, 1997. Submit applications to Charles Burtis, Program Specialist, Texas Commission for the Blind, 4800 N. Lamar, Suite 220, Austin, Texas 78756, with a narrative no longer than five typed pages that describes: (1) individual or organization applying; (2) proposed geographic coverage; (3) proposed number of hours available per week; (4) quality and extent of services to be provided (list service categories offered); (5) experience in providing services to the migrant/farmworker community (cite recipient population and mode of delivery); (6) qualifications of each person who will provide this service (each person, even if associated with an organization, will be evaluated); (7) additional information about the person or organization and past achievements in serving consumers who are visually impaired or blind; (8) three letters of reference from individuals served by the applicant; and (9) a listing of agreements with other state agencies.

INQUIRIES: To facilitate the process, interested parties are urged to contact the Texas Commission for the Blind with related questions prior to drafting proposals. Inquiries should be directed to Charles Burtis at (512) 459-2589.

REIMBURSEMENT AND METHOD OF PAYMENT: Services will be reimbursed at an hourly rate of \$20 per hour for time spent directly with consumers and conferring with the Texas Commission for the Blind vocational rehabilitation staff. Travel time will be reimbursed at \$10 per hour. Travel costs will be reimbursed following State of Texas guidelines. The service provider will be responsible for all transportation arrangements.

Each provider will submit a monthly statement containing a detailed listing of provided services and copies of reports documenting contacts with consumers. The Commission will share report formats with the providers. Upon Commission approval of the submissions, payment shall be made by State warrant.

REVIEW CRITERIA: Applications for the designated area will be reviewed by a panel consisting of a Commission regional director, the vocational rehabilitation coordinator, and a central office liaison. Respondents meeting minimum criteria will be scheduled for a presentation. The presentation must include an oral synopsis of the application.

Reviewers will use the following criteria to evaluate the applications:

- (1) The application addresses the explicit purpose cited in this notice.
- (2) The applicant addresses expertise with the subject matter.
- (3) The applicant provides evidence of their professional and organizational capacity to achieve the objectives in a timely manner.
- (4) The applicant agrees to provide services to the consumer at the consumer's residence.
- (5) The applicant agrees to meet with the vocational rehabilitation staff for an initial orientation to this project and on an as-needed basis.

(6) The applicant agrees to observations by the vocational rehabilitation staff to review outreach techniques and to assure quality of services.

(7) The applicant agrees to submit reports with required content within 30 days of service provision.

Additional Factors: Preference will be given to applicants exhibiting:

- the widest array of services;
- the greatest availability for geographic coverage within the area or areas cited as needing coverage; and
- experience in addition to demonstrated knowledge.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712737

Pat D. Westbrook

Executive Director

Texas Commission for the Blind

Filed: September 25, 1997



Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC 501. Requests for federal consistency review were received for the following projects(s) during the period of September 18, 1997, through September 23, 1997:

FEDERAL AGENCY ACTIONS:

Applicant: U.S. Army Corps of Engineers; Location: Waters of the United States, within a portion of the High Island Field, bounded on the south and west by the existing perimeter levee, on the north by a marsh adjacent to the perimeter levee, and on the east by State Highway 124, and the 5-foot elevation contour, at the base of High Island, Galveston County, Texas; Project No.: 97-0317-F1; Description of Proposed Action: The applicant proposes to extend the time to complete work, under the general permit until December 31, 2002. The general permit authorizes the construction of access roads, drilling site location pads, and production site pads, including excavation and levee construction; Type of Application: U.S.C.O.E. permit application #15208(03) under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: U.S. Army Corps of Engineers; Location: Navigable waters of the United States within the Galveston District; Project No.:

97-0318-F1; Description of Proposed Action: The applicant proposes an extension of time for work authorized by this general permit. The authorized work is limited to the construction of subaqueous pipeline and cable crossings which do not exceed 500 feet in length.; Type of Application: U.S.C.O.E. permit application #15800(03) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action should be referred to the Coastal Coordination Council for review and whether the action is or is not consistent with the Texas Coastal Management Program goals and policies. All comments must be received within 30 days of publication of this notice and addressed to Ms. Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712677

Garry Mauro

Chairman

Coastal Coordination Council

Filed: September 24, 1997



Comptroller of Public Accounts

Corrections of Error

The Comptroller of Public Accounts proposed new and amendment to 34 TAC §§7.51–7.54. The rules appeared in the September 19, 1997, issue of the *Texas Register*, (22 TexReg 9441).

The title of §7.52 is shown as “Maximum Tuition Credit.” the correct title should read “7.52. Maximum Tuition Credit Hours and Fees Paid.”

The Comptroller of Public Accounts adopted an amendment to 34 TAC §33.294. The rule appeared in the August 12, 1997, issue of the *Texas Register*, (22 TexReg 7505).

The effective date is listed incorrectly as “April 21, 1997”, the correct effective date is “August 21, 1997”.



Office of the Consumer Credit Commissioner

Notice of Rate Ceiling

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Article 1D.003, Title 79, Revised Texas Civil Statutes of Texas, as amended (Article 5069–1D.003, Vernon’s Texas Civil Statutes).

[graphic]

Issued in Austin, Texas, on September 22, 1997.

TRD-9712714

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: September 24, 1997



Texas Department of Criminal Justice

Request for Qualifications

The Texas Department of Criminal Justice - Facilities Division (TDCJ-FD) announces that it requires Professional Services of a qualified commissioning authority/firm for new institutional construction projects, pursuant to the provisions of the Government Code, Chapter 2254, Subchapter A. The two High Security projects are each approximately 250,000 gross square feet, two story buildings located in Wichita Falls and Lamesa, Texas with a project budget of \$20 to \$30 million. The facility is expected to be comprised of prison administrative space, cell block, kitchen, and medical facilities using state of the art proven electronic security and building automation systems.

The facilities' design is expected to complete by January 31, 1998, and with tentative construction start date of March 15, 1998, with a final occupancy in August 1999.

The management structure is traditional "design and spec" with full design documents and specifications to be developed by two architectural and engineering firms. A general contractor will be contracted by competitive bidding. The TDCJ-FD will have a Project Manager as owner's representative on-site. The commissioning authority will report to the TDCJ Project Engineer based at TDCJ headquarters in Huntsville.

The Commissioning Authority will help TDCJ ensure that all systems are complete and functioning properly at time of occupancy and that facility staff have adequate system documentation and training.

Commissioning consists of systematically documenting that specified components and systems have been installed and start properly, and then functionally tested to verify and document proper operation through all modes and conditions. In addition, owner-personnel training will be verified and final project operations and maintenance (O&M) documents will be reviewed by the Commissioning Authority.

To be considered for these services, submittals must be prepared in compliance with the format stipulated in the RFQ Package, and must be received not later than 4 p.m. on November 6, 1997. Submittals received after that time will be subject to disqualification. Firms interested in providing these services should fax their request for an RFQ Package to: Contracts Administrator, TDCJ Facilities Division at (409) 294-8753. In case of difficulty in transmitting a fax, call (409) 294-6656. Submittals shall not include a proposed fee or compensation schedule. These services include professional engineering services, and are subject to the Professional Services Act. Submission and participation in the selection process by interested firms shall be at no cost or obligation to the TDCJ-FD. The TDCJ-FD reserves the right to select one or more firms, or reject all submittals received. Materials received will not be returned, and the TDCJ-FD shall have no obligation to any firm should it develop or use any idea suggested in the course of, or developed in connection with, its efforts to contract as provided herein. All materials submitted become the property of the TDCJ-FD. Questions regarding this Request for Qualifications should be faxed to the number shown previously. Copies of questions and responses which include new information pertinent to the selection process will be forwarded to all firms that have requested RFQ Packages.

Issued in Austin, Texas, on September 28, 1997.

TRD-9712858

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Filed: September 29, 1997



Texas Education Agency

Request for Proposals Concerning Student Assessment Professional Services

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-97-027 from nonprofit organizations, institutions of higher education, private companies, individuals, and regional education service centers for providing professional services to support activities conducted for the statewide testing program. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The TEA manages and oversees the development, administration, scoring, and analysis of the statewide assessment of student achievement required by Texas Education Code, Chapter 39, Subchapter B. This RFP is requesting professional services to support activities necessary for the statewide assessment program and requires the identification, employment, and administrative support of contracted individuals. The RFP specifies the qualifications and experiences required and preferred for the individuals and details the scope of their duties.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than January 2, 1998, and an ending date of no later than August 31, 2001.

Project Amount. Funding for the requested services will not exceed \$2,500,000 annually. Project funding following the first year will be based on satisfactory progress of first-year objectives and on general budget approval by the commissioner of education.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in the RFP. The TEA will base its selection on, among other things, demonstrated competence and qualifications of the proposer and on the reasonableness of the proposed fee. The selection criteria and the review process are specified in the RFP. The TEA reserves the right to select from the highest ranking proposals those that address all requirements in the RFP.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or to pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-97-027 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFP number in your request.

Further Information. For clarifying information about the RFP, contact Keith Cruse, Student Assessment Division, Texas Education Agency, (512) -463-9536 or by e-mail at sjones@tmail.tea.state.tx.us.

Deadline for Receipt of Proposals. A proposal must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Friday, November 21, 1997, to be considered for funding.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712692

Criss Cloudt

Associate Commissioner for Policy Planning and Research
Texas Education Agency
Filed: September 24, 1997



Texas Ethics Commission

Correction of Error

The Texas Ethics Commission submitted an Open Meeting Notice, which was published in the September 12, 1997, issue of the *Texas Register*, (22 TexReg 9291).

The meeting date was incorrectly published as "Friday, September 2, 1997, 9:30 a.m.", instead of "Friday, September 12, 1997, 9:30 a.m.".



General Services Commission

Mandatory Request for Information #98-1A

The State of Texas requests information regarding capabilities in conducting a needs analysis of both automated and non-automated processes within a large state agency. This information will be used to develop specifications for solicitation to acquire resources to conduct a needs analysis.

PURPOSE

The General Services Commission (GSC) will conduct a comprehensive needs analysis of both automated and non-automated agency processes to improve the quality of the information required by the Commissioners and Executive Management in the decision making process. In addition, the needs analysis should address future strategies for the use of automated and non-automated information management systems to improve communication and information sharing among divisions within the agency.

PROCESS

The GSC intends to enter into a contract with a vendor to conduct a needs analysis. The purpose of this RFI is to give the state adequate information for the development of the solicitation for a needs analysis. Internal and external audit reports may be utilized during the actual needs analysis. If so, they will be provided to the needs analysis contractor as government furnished information (GFI).

RFI REQUIREMENTS

Interested vendors are required to submit information demonstrating the following:

- A. The respondent's current State of Texas vendor identification number and that the respondent is a Qualified Information Systems Vendor (QISV). For information on the QISV application and approval, please call (512) 463-5315.
- B. Indicate interest in the subsequent solicitation for a needs analysis study. Include the point of contact for subsequent solicitation and the correct business mailing address for that person.
- C. Knowledge of state government processes in the areas of procurement, fiscal management, and contract and project management.
- D. General process of conducting a needs analysis study.

E. Knowledge necessary to evaluate current processes and recommend strategies for process improvement.

F. Information necessary in staffing and documentation requirements for the study.

G. Budgetary estimates necessary for a comprehensive needs analysis study. These are to be estimates only and are not to be considered as formal proposal prices.

ADDITIONAL INFORMATION

Vendors are encouraged to provide any additional information relevant to a needs analysis study of this nature.

PROPRIETARY INFORMATION

Vendors must indicate which portions, if any, of the information being provided is proprietary or confidential, by marking each page upon which such information appears. Failure to do so will result in all submitted information being subject to public disclosure in accordance with the Texas Public Information Act, Chapter 552, Texas Government Code. The final determination of whether information submitted is proprietary and not subject to public disclosure is made by the Attorney General of Texas. As stated above, the information is requested to develop specifications for a solicitation.

RESPONSE

Response to this RFI is mandated if you have any interest in the subsequent solicitation for conducting a needs analysis study. Vendors responding to this RFI will form the list of vendors to whom the needs analysis study solicitation will be sent and will constitute the only list of candidates for award of that study.

To be considered responsive to this request, the information requested must be received by October 15, 1997 at 3:00 p.m. central standard time.

Send RFI response to: Bid Services Section, ATTN: RFI 98-1A, General Services Commission, 1711 San Jacinto Boulevard, Room 180, Austin, Texas 78701

Ensure that the envelope is clearly marked on its front with the RFI number (RFI 98-1A)

VENDOR COSTS

Vendors are responsible for all costs associated with preparing a response to this RFI, and the State of Texas, General Services Commission (GSC) will not be responsible for any vendor costs associated with preparing this information.

REQUEST FOR CLARIFICATION

Any questions necessary to clarify this RFI must be submitted in writing. Submission of questions by electronic mail is preferred. Send questions to the following email address: donna.cordes@gsc.state.tx.us

Contact: Donna Cordes, Director of Information Systems, General Services Commission, 1711 San Jacinto Boulevard, Austin, Texas 78701. Voice: (512) 475-2486 Fax: (512) 463-3922

Issued in Austin, Texas, on September 24, 1997.

TRD-9712700

Judy Ponder

General Counsel

General Services Commission

Filed: September 24, 1997



Office of the Governor

Invitation for Applications under the Juvenile Justice and Delinquency Prevention Act, Title V

The Criminal Justice Division of the Governor's Office is soliciting applications for grants to be awarded under the federal Juvenile Justice and Delinquency Prevention Act for Title V - Incentive Grants for Local Delinquency Prevention Programs, in response to the need for local comprehensive delinquency prevention planning and programs for youth who have, or are likely to have, contact with the juvenile justice system. Complete guidelines for Title V programs are available in the application kit.

The Title V prevention strategy is designed to reduce identified risk factors while strengthening protective factors. It requires a commitment by, and participation of, the entire community in developing and implementing a comprehensive strategy and to coordinate the use of existing programs and resources. A comprehensive three-year plan is also required, describing the extent of risk factors identified in the community and how these risk factors will be addressed.

The maximum amount that can be applied for is \$100,000 and the minimum is \$25,000. Eligible applicants are cities; counties; and Native American tribes that perform law enforcement functions; or any combination of the above.

Priority consideration will be given to Native American tribes and to applicants serving rural areas (cities with juvenile populations of 2,000 or less, and counties with juvenile populations of 4,000 or less). For purposes of determining juvenile population relative to eligibility, a juvenile means a child 10 to 16 years of age.

Grantees must provide a dollar for dollar match with cash, in-kind contributions, or a combination thereof. In-kind match is limited to volunteer services, professional services, equipment, transportation, and building space.

Special application kits specific for this fund may be obtained from the applicant's respective regional council of governments or from the Criminal Justice Division of the Governor's Office, P.O. Box 12428, Austin, TX 78711, attn: Planning and Grant Administration at (512) 463-1919. Applicants must contact their regional council of governments for additional information regarding specific application deadlines and submission requirements.

CJD staff will conduct an initial screening of applications to determine eligibility. Eligible applicants will be scored competitively by a review team appointed by the Executive Director of the Criminal Justice Division. The prioritization/ranking from the regional councils of governments will be taken into consideration during ranking and scoring of applications by the review team. CJD will make the final funding decision.

For further information call Glenn Brooks, Director of Justice Programs, Criminal Justice Division, at (512) 463-1944 or Angie Williams at (512) 463-1924.

Issued in Austin, Texas, on September 8, 1997.

TRD-9712701

Pete Wassdorf
Deputy General Counsel
Office of the Governor
Filed: September 24, 1997

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Texas Department of Health

Corrections of Error

The Texas Department of Health adopted an amendment to 25 TAC §29.606. The rule appeared in the August 22, 1997, issue of the *Texas Register*, (22 TexReg 8389).

On page 8389, in the preamble, in the fourth paragraph, due to the department's error, the sentence "Although no comments were received, the department made minor editorial changes for format purposes" should not have been published.

On page 8390, due to the *Texas Register's* error, the subsection (c) should have been published as "one subsection" instead of "being divided into three subsections."

The Texas Department of Health (department) submitted a revised open meeting for the Midwifery Board to be held on September 8, 1997, at 9:30 a.m., TRD #9711450.

The meeting notice should state "proposed rules concerning the use of oxygen (25 Texas Administrative Code, Chapter 37)" instead of "proposed rules concerning the use of oxygen (25 Texas Administrative Code, Chapter 38)".

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Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

[graphic]

[graphic]

[graphic]

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Texas Regulations for Control of Radiation in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the Texas Regulations for Control of Radiation.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of

Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on September 23, 1997.

TRD-9712652

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: September 23, 1997



Notice of Intent to Revoke Certificates of Registration

Pursuant to *Texas Regulations for Control of Radiation* (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Glen R. McAdams, D.C., Conroe, R20901; Pham Chiropractic, Arlington, R22337; Fisher Chiropractic Clinic, San Antonio, R18579; Laney Chiropractic and Rehabilitation Center, Keller, R18126; Martin Chiropractic, Waco, R05487; Fondren Chiropractic Clinic, Houston,

R22154; The Spine Institute, P.A., Houston, R21563; Curtis Foster, D.D.S., Midland, R22313; Dave E. Nichols, D.D.S., Houston, R22278; James I. Richards, D.D.S., Garland, R11511; North Texas Family Practice Associates, P.A., Dallas, R22368; Harrisburg Physicians Clinic, Houston, R22449; Pars Neurological, P.A., Anahuac, R22365; Terrence H. Upton, D.P.M., Houston, R22379; Mont Del Veterinary Clinic, Fort Worth, R15742; John F. Dulemba, M.D., P.A., Denton, Z00865.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on September 25, 1997.

TRD-9712777

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: September 25, 1997



Notice of Intent to Revoke a Radioactive Material License

Pursuant to *Texas Regulations for Control of Radiation* (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following licensee: Oxy Petrochemicals, Inc., Alvin, L03363.

The department intends to revoke the radioactive material license; order the licensee to cease and desist use of such radioactive material; order the licensee to divest himself of the radioactive material; and order the licensee to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the licensee for a hearing to show cause why the radioactive material license should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material license will be revoked at the end of the 30-

day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on September 25, 1997.

TRD-9712776

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: September 25, 1997



Texas Health and Human Service Commission

Families are Valued Project Award Announcement

The Texas Health and Human Services Commission through the State Office of Community Resource Coordination Groups of Texas Families Are Valued Project has awarded the fourth and final grant to establish a Local Family Collaborative site to demonstrate permanency planning for children with developmental disabilities. The grant was awarded to Life Management Center for Mental Health Mental Retardation Services of El Paso, Texas. For additional information on the Families Are Valued Project and the Local Family Collaborative sites contact: Yolanda Montoya Families Are Valued Project Texas Health and Human Services Commission 4900 North Lamar Boulevard, 4th Floor Austin, Texas 78751, Phone: (512) 424-6544 or (512) 424-6528 Fax: (512) 424-6590, e-mail: yolandam@hhsc.state.tx.us, website: www.hhsc.state.tx.us/crcg/fav.htm, Kelley Knight, Administrative Technician, (512) 424-6544 visit the CRCG website at www.hhsc.state.tx.us/crcg/crcg.htm

Issued in Austin, Texas, on September 26, 1997.

TRD-9712802

Marina Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Filed: September 26, 1997



Notice of Request for Information

The Texas Health and Human Services Commission (HHSC) hereby gives notice of a Request for Information (RFI). The purpose of the RFI is to obtain information regarding the various options available for the design and testing of a consistent functional needs assessment instrument and/or process on a sample population that is representative of the types of people who are enrolled or who seek enrollment in long-term care services programs in Texas.

House Bill 663 requires HHSC to conduct a pilot project to test whether people seeking long-term care services could be assessed using a more consistent process that is based on the individual's functional ability. Functional ability is defined as an individual's level of ability to perform essential daily tasks such as bathing, dressing, feeding oneself, using the toilet, and grooming. The pilot project will examine whether using functional need/ability as the primary criterion of assessment yields accurate information for service planning/budgeting at the individual and aggregate level. The project will also examine if and to what extent functional need/ability should be considered in combination with other factors such

as medical diagnosis, I.Q., or age. HHSC is seeking information regarding the creation of a scientifically validated instrument and/or process that enables the accurate prediction of individual need and testing of a prototype of the instrument and/or process to ensure a level of validity and specificity that will provide the basis for accurate decision-making and accountability for long-term care service dollar utilization.

This RFI is to obtain information only and does not constitute a formal request to purchase. Estimated pricing information is requested for planning and budgetary purposes only.

Copies of the RFI may be requested from: Ms. Joyce Dawidczyk, Program Analyst, Texas Health and Human Services Commission, 4900 North Lamar, 4th Floor, Austin, Texas 78711-3247, or by facsimile (512) 424-6585. The RFI will also be available on the Internet on HHSC's home page: www.hhsc.state.tx.us. The request should include the name of the requestor, the address of the requestor, the name of a contact person, and a telephone and fax number for that person. Requests for the RFI may be sent to HHSC beginning on the date that this notice is published in the *Texas Register*.

The closing date for the receipt of responses will be 5:00 p.m., Central Time, on October 31, 1997.

Issued in Austin, Texas, on September 23, 1997.

TRD-9712651

Marina Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Filed: September 23, 1997



Texas Department of Housing and Community Affairs

Manufactured Housing Division

Notices of Administrative Hearing

Wednesday, October 15, 1997, 10:00 a.m.

State Office of Administrative Hearing, Stephen F. Austin Building,
1700 North Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of Texas Department of Housing and Community Affairs vs. Spring Branch Homes, Inc. to hear alleged violations of the Act, §§4(f) and 14(f)(j)(k) and Rules §§80.51, 80.121(a)(b)(c), 80.131(b) and 80.132(6) regarding not properly installing ten manufactured homes; not responding with corrective action on ten manufactured homes in a timely manner; and failing to comply with the initial report and warranty orders of the Director and provide the Department with copies of completed work orders on two homes. SOAH 332-97-1637. Department MHD1996000998C, MHD1997001552D, MHD1997001553D, MHD1997001558D, MHD1997002074D, MHD1997002118D, MHD1997001554D, MHD1997002046D, MHD1997002050D, MHD1997001556D, MHD1997002243D, and MHD1997000776C.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712879

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: September 29, 1997



Wednesday, October 15, 1997, 10:00 a.m.

State Office of Administrative Hearing, Stephen F. Austin Building,
1700 North Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of Texas Department of Housing and Community Affairs vs. Frank Williams dba Williams Transport to hear alleged violations of the Act, §§7(d) and (k)(6), 17(b) and Rules §§80.28(a) and 80.125(e) regarding obtaining, maintaining or possessing a valid certificate of registration; and not properly submitting monthly Installation Reports showing the number of homes installed. SOAH 332-97-1636. Department MHD1996001807M.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712880

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: September 29, 1997



Thursday, October 9, 1997, 9:00 a.m.

State Office of Administrative Hearing, Stephen F. Austin Building,
1700 North Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of Texas Department of Housing and Community Affairs vs. Alton Diggles dba Alton Mobile Home Moving and Service aka Alton Mobile Home Moving Service and Repair to hear alleged violations of the Act, §§7(d) and (k)(1)(5), 8(b), 8(d), 17(b) and 18(b), Rules §§80.125(e)(1) and Business and Commerce Code, §17.46(b)(2)(3)(5) regarding obtaining, maintaining or possessing a valid certificate of registration; selling a used manufactured home that was not habitable; not transferring a good and marketable title to a home within 30 days after the date that the transfer of ownership was effective; and engaging in deceptive trade practices. SOAH 332-97-1635. Department MHD1996000147C, MHD1996000148C, MHD1996000242C, MHD1996001066I, MHD1997001807C, MHD1996001264C, MHD1997000515D and MHD1997001740D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712881

Larry Paul Manley
Executive Director

Texas Department of Housing and Community Affairs
Filed: September 29, 1997



Notice of Establishing a Manufactured Housing Anchor Installation Task Force

The Texas Department of Housing and Community Affairs (the "Department") is hereby giving notice of the establishment of a Manufactured Housing Anchor Installation Task Force to study problems associated with manufactured home anchor installations in various soil classes where normal installation procedures have been found to be difficult, and to study possible alternatives. The Task Force will be composed of interested members of the Citizen's Advisory Commission, Department staff, and others.

The Anchor Installation Task Force will complement the efforts of the Citizen's Advisory Commission on Manufactured Housing Rules, which has recently completed its examination of the Department's present rules and has submitted its recommended changes to the Department. The Department intends to issue new proposed rules based on these recommendations shortly, subject to public comment and any additional information the Department is required to consider.

Written comments with respect to the Anchor Installation Task Force may be sent to the Texas Department of Housing and Community Affairs, Manufactured Housing Division, P.O. Box 12489, Austin, Texas 78711, or comments may be faxed to (512) 475-4760.

Issued in Austin, Texas, on September 23, 1997.

TRD-9712672

Larry Paul Manley
Executive Director

Texas Department of Housing and Community Affairs
Filed: September 23, 1997



Texas Department of Human Services

Notice of Public Hearing - Career Opportunity Orientation

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the department's requirement for applicants to attend a Career Opportunity Orientation at the Texas Workforce Commission (TWC), prior to being certified. The public hearing will be held on October 10, 1997, at 9:00 a.m. in the Public Hearing Room of the John H. Winters Center (701 West 51st Street, Austin, Texas, First Floor, East Tower, Room 100).

Contact Person: Please contact Kevin Brown, M/C W-312, P. O. Box 149030, Austin, Texas 78714-9030, (512) 438-3084.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Kevin Brown, (512) 438-3084 by October 8, 1997, so that appropriate arrangements can be made.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712681

Glenn Scott
Agency Liaison, General Counsel
Texas Department of Human Services
Filed: September 24, 1997



Open Solicitation for San Augustine County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, in the March 31, 1995, issue of the *Texas Register* (20 TexReg 2443), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for San Augustine County #203, identified below, where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous, January 1997 thru June 1997 six-month period: 94.5, 93.3, 93.7, 97.6, 98.4, 96.4. Potential contractors seeking to contract for existing beds which are currently licensed as nursing home beds or hospital beds in the counties identified in this public notice must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Gary L. Allen, Long Term Care Moratorium Services, Office of Programs, Mail Code W-530, Post Office Box 149030, Austin, Texas 78714-9030. Historically Underutilized Businesses are encouraged to apply. The written reply must be received by TDHS by 5 p.m. November 3, 1997, the last day of the open solicitation period. Potential contractors will be placed on a waiting list for the primary selection process in the order that the beds which were being proposed for Medicaid certification were initially licensed. The primary selection process will be completed on November 13, 1997. If there are insufficient available beds after the primary selection to reduce occupancy rates to less than 90%, TDHS will place a public notice in the *Texas Register* announcing an additional open solicitation period for those individuals wishing to construct a facility.

Issued in Austin, Texas, on September 15, 1997.

TRD-9712718

Glenn Scott
Agency Liaison, General Counsel
Texas Department of Human Services
Filed: September 24, 1997



Open Solicitation for Upton County

Pursuant to Title 2, Chapters 22 and 32 of the Human Resources Code and 40 TAC §19.2324, in the March 31, 1995, issue of the *Texas Register* (20 TexReg 2443), the Texas Department of Human Services (TDHS) is announcing the reopening of the open solicitation period for Upton County, County Number 231, identified in the January 24, 1997, issue of the *Texas Register* (22 TexReg 985). Potential contractors desiring to construct a 90-bed nursing facility in the above referenced county must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Gary L. Allen, Long Term Care Moratorium Services, Office of Programs, Mail Code W-530, P.O. Box 149030, Austin, Texas 78714-9030. Historically underutilized Businesses are encouraged to apply. Upon receipt of a reply from a

potential contractor, TDHS will place a notice in the *Texas Register* to announce the closing date of the reopened solicitation period.

Issued in Austin, Texas, on September 15, 1997.

TRD-9712719

Glenn Scott

Agency Liaison, General Counsel

Texas Department of Human Services

Filed: September 24, 1997



Texas Department of Insurance

Notice of Public Hearing

The Commissioner of Insurance at a public hearing under Docket No. 2307 scheduled for 10:00 a.m. on November 3, 1997, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas, will consider a staff proposal to repeal Refusal to Renew Mandatory Endorsement HO-100, Refusal to Renew Mandatory Endorsement TDP-026, Refusal to Renew Mandatory Endorsement TDP-027, Refusal to Renew Mandatory Endorsement TFR-086, Refusal to Renew Mandatory Endorsement TFR-087 and Refusal to Renew Mandatory Endorsement FRO-486 as adopted by the previous State Board of Insurance in Board Order No. 60152.

The mandatory endorsements amending the Refusal to Renew provisions in the Texas Homeowners Policy, Texas Dwelling Policy, Texas Farm and Ranch Policy and Texas Farm and Ranch Owners Policy incorporated a prohibition of the refusal to renew a residential property policy because of the condition of the premises unless there was a change in the condition(s) of the premises, the insurer notified the insured of the condition(s) and the insurer provided the insured adequate time to correct the condition.

The endorsements adopted by the State Board of Insurance amended the Refusal to Renew provisions in the above referenced policies to read as follows:

We may not refuse to renew this policy based on the condition of the premises unless:

- (1) there is a change in the condition(s) of the premises,
- (2) we have notified you of the condition(s) which may result in our refusal to renew the policy, and
- (3) we have allowed you adequate time to remedy the condition(s).

On February 26, 1993 a temporary injunction was issued by a Travis County District Court prohibiting the department from implementing or enforcing the endorsements as amended. The district court decision was upheld by the Third Austin Court of Appeals.

A copy of the full text of the staff's proposal to repeal, filed September 22, 1997, is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the proposal, please contact Angie Arizpe at (512) 463-6326 (refer to Ref. No. P-0997-29-I).

Comments on the proposed repeal must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional

copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Lines, Texas Department of Insurance, P.O. Box 109104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Issued in Austin, Texas, on September 24, 1997.

TRD-97012697

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: September 24, 1997



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Hunt, DuPree, Rhine & Associates, Inc., a foreign third party administrator. The home office is Greenville, South Carolina.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712696

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: September 24, 1997



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of PHC Physician Networks, Inc., a foreign third party administrator. The home office is Atlanta, Georgia.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712766

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: September 25, 1997



Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding CHARLES MACKENZIE, Docket Number 96-1736-OSI-E (Certification Number 3858) on September 19, 1997, assessing \$2,200 in administrative penalties with \$660. deferred.

Information concerning any aspect of this order may be obtained by contacting Robert Brach, OCS-OSSF Program Administrator at (512) 239-2150, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RANDY WILSON, Docket Number 97-0259-OSI-E (Certification Number 907) on September 19, 1997, assessing \$1,250 in administrative penalties with \$250. deferred.

Information concerning any aspect of this order may be obtained by contacting Robert Brach, OCS-OSSF Program Administrator at (512) 239-2150, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. SULAIMAN THOBANI, Docket Number 96-1422-PST-E (Facility Number 42694, Enforcement ID Number E11671) on September 19, 1997, assessing \$10,000 in administrative penalties with \$3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Walt Ehresman, Staff Attorney at (512) 239-0600 or Adele Noel, Enforcement Coordinator at (512) 239-1045, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

Issued in Austin, Texas, on September 26, 1997.

TRD-9712828

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 26, 1997



Notice of Application for Amendment to Certificate of Adjudication Pursuant to Texas Water Code §11.122 Requiring Notice to Interjacent Appropriators

The following notices of application were mailed on September 26, 1997: CITY OF WEATHERFORD; Application Number 08-3358A to amend Certificate of Adjudication Number 08-3358. Certificate of Adjudication Number 08-3358 authorized the City of Weatherford to impound 530 acre-feet of water in an existing reservoir (Sunshine Lake) on Town Creek, tributary of the South Fork of the Clear Fork Trinity River, tributary of the West Fork Trinity River, tributary of the Trinity River, Trinity River Basin. The certificate also included authorization to use the impounded waters for recreational purposes and to divert, at a maximum rate of 0.81 cfs, not to exceed 530 acre-feet of water per annum from the reservoir for municipal purposes. The certificate included a priority date of June 9, 1952. The City has a separate authorization, under a contract with the Tarrant Regional Water District (Water Right Permit Number 5157), to divert and use water from a specific point on Lake Benbrook (on the Clear Fork Trinity River) at a maximum rate of 31.2 cfs for municipal purposes.

Lake Benbrook is approximately 20 miles downstream of Sunshine Lake. Applicant seeks to amend Certificate Number 08-3358 to authorize: 1) water presently diverted at Sunshine Lake to be diverted from either Sunshine Lake or from the City's diversion point on Benbrook Lake, at a maximum diversion rate of 31.2 cfs, 2) the right to use the bed and banks of Town Creek, South Fork of the Clear Fork of the Trinity River and the Clear Fork of the Trinity River to allow water presently authorized to be diverted at Sunshine Lake to flow downstream to Benbrook Lake, 3) the right to divert a combined annual volume from either Sunshine Lake or Lake Benbrook of 515 acre-feet per year for municipal purposes, and 4) to change the purpose of use to irrigation for the remaining 15 acre-feet per year to be diverted only from Sunshine Lake.

GREEN VALLEY FARMS; Application Number 18-3887A to amend Certificate of Adjudication Number 18-3887. Certificate of Adjudication Number 18-3887 authorized Green Valley Farms, Inc. to maintain a dam on the San Marcos River in Hays County which creates an impoundment on the San Marcos River and the Blanco River, tributary of the San Marcos River, tributary of the Guadalupe River, Guadalupe River Basin. The certificate also authorizes impoundment of not to exceed 300 acre feet of water in the reservoir and diversion and use of not to exceed 792 acre-feet of water per annum from the reservoir. Water is authorized to be diverted at a maximum rate of 7.33 cfs (3300 gpm) and used for irrigation of 403 acres of land in the Thomas G. McGehee Grant, Abstract Number 11, Hays County, Texas. The certificate has a time priority of June 22, 1905. Pursuant to a "Lease of Water Right" agreement between Green Valley Farms and the Martindale Water Supply Corporation, the applicant seeks authorization to: 1) change the purpose of use of 396 acre-feet of the annual diversion authorized from irrigation use to municipal use; 2) add a diversion point for the diversion of said municipal water on the San Marcos River, approximately 3.8 miles downstream of the authorized reservoir; and 3) include a maximum diversion rate for the new point of 3.675 cfs (1650 gpm), with the provision that the combined maximum diversion rate for the Certificate, as to be amended, will not exceed 7.33 (3300 gpm). The water included in this amendment application is to be used for the term of the lease agreement by the Martindale Water Supply Corporation.

The Executive Director may issue an amendment to the Certificate of Adjudication on or after October 24, 1997, unless a written hearing request is filed in the Chief Clerk's Office of the TNRCC on or before October 14, 1997. To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; and (5) the location of your property relative to the applicant's operations.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

Requests for hearing must be submitted in writing to the Chief Clerk's Office, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. Written public comments may also be submitted to the Chief Clerk's Office on or before March 3, 1997. For information concerning

technical aspects of the permit, contact Mike Howard, MC 160, at the same above PO Box address. For information concerning hearing procedures or citizen participation, contact the Public Interest Counsel, MC 103, at the same PO Box address. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Issued in Austin, Texas, on September 26, 1997.

TRD-9712826

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 26, 1997



Revised Notice Of Application For Municipal Solid Waste Management Facility Permit

For The Period of August 18, 1997 through August 22, 1997

The CITY OF MIDLAND for an amendment, Proposed Permit Amendment Number MSW1605-B, to authorize an increase in the permitted height of its Type I facility to 125 feet above surrounding ground, which will add approximately twenty-nine years to the expected life of the facility. The permittee is authorized to dispose of municipal solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; municipal solid waste resulting from construction or demolition projects; Class 2 and Class 3 industrial solid waste; and special waste that is properly identified. Solid waste may be initially accepted for disposal at a rate of 400 tons per day and is expected to increase to 1,325 tons per day in 2060. The permit would allow the operating hours of this municipal solid waste facility to be 24 hours per day, each day of the week. The facility is located approximately seven miles east of Midland, approximately one-half mile north of State Highway 158 and three miles west of RR 1379 in Midland County, Texas.

If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the application number, TNRCC docket number or other recognizable reference to the application; (3) the statement I/we request an evidentiary public hearing; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 1101, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Issued in Austin, Texas, on September 26, 1997.

TRD-9712823

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 26, 1997



Notice Of Application For Municipal Solid Waste Management Facility Permit

For the Period of September 22, 1997 through September 26, 1997 WASTE MANAGEMENT OF TEXAS, INC. for an amendment, Proposed Permit Amendment Number MSW2093-A, to authorize both lateral and vertical expansion to the permitted facility. The amendment will increase the maximum fill height of the completed landfill from the currently permitted 742 feet mean sea level on the eastern portion of the site to 850 feet mean sea level on the western portion of the site and will increase the permitted acreage from the currently permitted 176.44 acres to 478.52 acres. The permittee is authorized to dispose of municipal solid waste resulting from or incidental to municipal, community, commercial, institutional and recreational activities; municipal solid waste resulting from construction or demolition projects, Class 1 non-hazardous industrial solid waste, Class 2 industrial solid waste, Class 3 industrial solid waste and special wastes that are properly identified. The acceptance of Class 1 non-hazardous industrial solid waste and Class 2 and 3 industrial solid waste, and/or special waste is contingent upon such waste being handled in accordance with 30 TAC §330.136 and §330.137, and in accordance with limitations and special provisions provided in the permit and application. Other solid waste may be accepted on a case by case basis with prior written approval from the executive director. The average waste acceptance rate of municipal solid waste is projected to be approximately 5,000 tons per day including Class 1 non-hazardous industrial solid waste. The maximum daily volume of incoming waste will vary with the solid waste disposal needs of those served by the landfill and is not limited to the projected maximum rate. The site would be authorized to operate 24 hours per day, Monday through Sunday. The facility is located at 8611 Covell Road, approximately 1.25 miles to the southwest of the intersection of Ray Ellison Boulevard and Interstate Highway 410 in San Antonio, Bexar County, Texas.

If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the application number, TNRCC docket number or other recognizable reference to the application; (3) the statement I/we request an evidentiary public hearing; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 1101, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Issued in Austin, Texas, on September 26, 1997.

TRD-9712825

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 26, 1997



Notice of Applications for Waste Disposal/Discharge Permits

Attached are Notices of Applications for waste disposal/discharge permits issued during the period of September 22 through September 26, 1997.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, type of application—new permit, amendment, or renewal and permit number.

ABB VETCO GRAY, INC., 12221 North Houston Rosslyn Road, Houston, Texas 77086; The wastewater treatment facilities are located at 12221 North Houston-Rosslyn Road, approximately 1.0 mile south of Farm-to-Market Road 149 in Harris County, Texas; renewal; Permit Number 11651-001.

CARGILL, INC., 16150 Peninsula Boulevard, Channelview, Texas 77530-9998; the wastewater treatment facilities are located at 16150 Peninsula Boulevard, approximately 3,300 feet southeast of the intersection of Jacintoport Boulevard and Peninsula Boulevard in Harris County, Texas; renewal; Permit Number 12231-001.

CENTER CITY OF, P.O. Box 1744, Center, Texas; the Mill Creek Water Treatment Plant; is located north of Lake Center, approximately 3 miles south-southeast of the intersection of U.S. Highway 96 and State Highway Spur 500 in Shelby County, Texas; renewal; Permit Number 10063-004.

COASTAL CHEMICAL COMPANY, INC, 3205 Pasadena Boulevard, Pasadena, Texas 77503; an organic chemical bulk storage and distribution facility; the plant site is located on the north side of Pasadena Boulevard, approximately 11,500 feet south-southwest of the intersection of State Highway 225 and East Belt Drive, Harris County, Texas; renewal; Permit Number 03483.

COGEN LYONDELL, INC., P.O. Box 968, Channelview, Texas 77530; a steam and electricity cogeneration facility; the plant site is located adjacent to the intersection of Avenue C and 5th Street in the Arco Lyondell Chemical plant in the City of Channelview, Harris County, Texas; amendment; Permit Number 02845.

EASTMAN CHEMICAL COMPANY, P.O. Box 7444, Longview, Texas 75607; the plant which manufactures chemicals and plastics is located on the south side of Interstate Highway 20, at the intersection of Interstate Highway 20 and State Highway 149, south of the City of Longview, Harrison County, Texas; amendment; Permit Number 00471.

EVANT CITY OF, P.O. Box 10, Evant, Texas 76525; the Evant Wastewater Treatment Facilities are located approximately 200 feet south of Live Oak Street near the southeast corner of the City of Evant in Coryell County, Texas; renewal; Permit Number 11011-01.

FRY ROAD MUNICIPAL UTILITY DISTRICT, c/o Young & Brooks, 1415 Louisiana, 5th Floor, Houston, Texas 77002; the wastewater treatment facilities are located at 19903 Franz Road, approximately 1,000 feet west of the intersection of Franz Road and Fry Road in Harris County, Texas; renewal; Permit Number 11989-001.

GRAND SALINE CITY OF, P.O. Box 217, City of Grand Saline, Texas 75140; the wastewater treatment facilities are located east of the intersection of the T&P Railroad and State Highway 110, approximately 0.5 mile east-southeast of the intersection of U.S. Highway 80 and State Highway 110 in the City of Grand Saline in Van Zandt County, Texas; renewal; Permit Number 10179-001.

JAMES H. GLANVILLE COMPANY, 12 Greenway Plaza, Suite 212, Houston, Texas 77046; the Port of Greens Bayou Wastewater Treatment Facilities are located at the confluence of Greens Bayou and the Houston Ship Channel on the north bank of the Houston Ship Channel and on the west bank of Greens Bayou in Harris County, Texas; renewal; Permit Number 12313-001.

JIM NEED INDEPENDENT SCHOOL DISTRICT, P.O. Box 9, Tuscola, Texas 79562; the wastewater treatment facilities and disposal site are located north of the intersection of Avenue E and Fourth Street in Lawn, Taylor County, Texas; renewal; Permit Number 11908-001.

MARBLE FALLS CITY OF, 800 Third Street, Marble Falls, Texas 78654; the wastewater treatment facility is located on the southwest corner of the intersection of South 1st Street and Avenue L, in the City of Marble Falls in Burnet County, Texas; renewal; Permit Number 10654-003.

NIXON CITY OF, 100 West Third Street, Nixon, Texas 78140; the wastewater treatment facilities are located approximately 1.5 miles north of the intersection of U.S. Highway 87 and State Highway 80 on the south bank of the Clear Fork of the Sandies Creek; north of Nixon in Gonzalez County, Texas; renewal; Permit Number 10234-001.

PANALPINA, INC., 18600 Lee Road, Humble, Texas 77338; the wastewater treatment facilities are located approximately 500 feet east of Lee Road at a point approximately 1,800 feet north of the intersection of Will Clayton Parkway and Lee Road in Harris County, Texas; renewal; 12418-001.

SUBLIGHT ENTERPRISES, INC., 601 Highway 181, Portland, Texas 78374; the wastewater treatment facilities are located approx-

imately 200 feet north of U.S. Highway 181 and approximately 3/4 mile southwest of the intersection of Farm-to-Market Road 893 (Portland Road) and U.S. Highway 181 in the City of Portland in San Patricio County, Texas; renewal; Permit Number 11096-001.

VALL, INC., dba VC Swine, Inc., 112 W. Main, P.O. Box 426, Texhoma, Ok 73949; The location of the swine facility is approximately three miles east of the intersection of U.S. Highway 287 and an unnamed county road and approximately one half mile north of the intersection of the unnamed county road and Farm-to-Market Road 2232 in Sherman County, Texas; new; Permit-By-Rule Number 03972.

Issued in Austin, Texas, on September 26, 1997.

TRD-9712827

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 26, 1997



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC Staff proposes Default Orders when the Staff has sent an Executive Director's Preliminary Report (EDPR) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code, §7.075, this notice of the proposed orders and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 2, 1997**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or consideration that indicate that the consent to the proposed Default Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 2, 1997**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Order and/or the comment procedure at the listed phone numbers; however, comments on the Default Order should be submitted to the TNRCC in **writing**.

(1)COMPANY: L & L Motors Incorporated and Lewis Moon; DOCKET NUMBER: 97-0111-AIR-E; ACCOUNT NUMBER: DB-1874; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: used car dealership; RULES VIOLATED: 30 TAC §114.1(c)(1) and (2) and the Texas Clean Air Act, §382.085(b) by offering for sale a motor vehicle not equipped with the proper air pollution control devices; PENALTY: \$500; STAFF ATTORNEY: Kara Salmanson, Litigation Support Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 795-2519.

(2)COMPANY: Torres Dickerson; DOCKET NUMBER: 97-0469-MSW-E; ACCOUNT NUMBER: Enforcement ID Number 2888; MSW Disposal Site Number 33477; LOCATION: Hungerford, Wharton County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste site; RULES VIOLATED: 30 TAC §330.4(a) and §330.5(a), and the Texas Health and Safety Code, §361.223(a) and TWC, §26.121 by permitting the storage, processing, removal, or disposal of municipal solid waste without a permit, transportation, processing, or disposal of municipal solid waste as to cause the discharge or imminent threat without obtaining specific authorization for discharge and the creation and maintenance of nuisance, or the endangerment of human health and welfare or the environment, by failing to take any measures to prevent off-site discharges; PENALTY: \$9,200; STAFF ATTORNEY: Booker Harrison, Litigation Support Division, MC 175, (512) 239-3400; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, (713) 767-3500.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712890

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: September 29, 1997



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code, §7.075. Section 7.075 requires that before the TNRCC may approve these AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **November 2, 1997**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments

about these AOs should be sent to the attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 2, 1997**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, Section 7.075 provides that comments on the AOs should be submitted to the TNRCC in writing.

(1)COMPANY: Ben Walters dba Owl Creek Park Water Supply; DOCKET NUMBER: 96-1648-PWS-E; ACCOUNT NUMBER: PWS Number 0140163; LOCATION: Lake Belton, Bell County, Texas; TYPE OF FACILITY: public drinking water system; RULE VIOLATED: 30 TAC §290.120(c)(5) and the Texas Clean Air Act (the Act), §341.031 by failing to submit to the commission water samples for lead/copper analysis; PENALTY: \$0; STAFF ATTORNEY: Kara Salmanson, Litigation Support Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (817) 751-0335.

(2)COMPANY: Fisher Auto Sales; DOCKET NUMBER: 97-0137-AIR-E; ACCOUNT NUMBER: TA-2219-U; LOCATION: Halcom City, Tarrant County, Texas; TYPE OF FACILITY: used car lot; RULE VIOLATED: 30 TAC §114.1(c)(1) and (2) and the Act, §382.085(b) by offering for sale two different vehicles on two separate occasions with missing and/or inoperable required emission control systems; PENALTY: \$500; STAFF ATTORNEY: Hodgson Eckel, Litigation Support Division, MC 175, (512) 239-2195; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 795-2519.

(3)COMPANY: Industrial Chrome Plate; DOCKET NUMBER: 96-1821-IHW-E; ACCOUNT NUMBER: SWR Number 32312; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: electroplating facility; RULE VIOLATED: 30 TAC §335.4 and §335.69(a)(1) and (d), and 40 Code of Federal Regulations (CFR), §§265.173(a), 265.191(b), 265.193, 265.195(a)(2) and (4), and TWC, § 26.121, Texas Water Commission Imminent and Substantial Endangerment Order, Order Provision Number 3(a), by failing to close hazardous waste containers in two satellite accumulation areas, by failing to assess and certify that an existing tank system met the standards of a hazardous waste tank system, by failing to have secondary containment for a hazardous waste tank which met the minimum standards, and by failing to inspect hazardous waste tanks daily and to keep records of the inspections, by failing to prevent a discharge to the environment, by allowing the discharge of contaminated storm water from the facility, and failing to ensure that all industrial solid wastes and residues, contaminated soil, leachate, runoff, or wastewater were managed so as to not cause the discharge or threat of discharge of waste into or adjacent to the waters of the state; PENALTY: \$28,240; STAFF ATTORNEY: Barbara Lazard, Litigation Support Division, MC 175, (512) 239-0674; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(4)COMPANY: Southwestern Water Corporation; DOCKET NUMBER: 96-0594-MLM-E; ACCOUNT NUMBER: PWS Numbers 2270166, 2270054, and 2460026 and Permit Number 13293-001; LOCATION: Hayes, Travis, and Williamson Counties; TYPE OF FACILITY: wastewater treatment plants and public water systems; RULES VIOLATED: 30 TAC §§290.41(c)(3)(N) and (O), 290.42(e)(6), 290.43(c)(2) and (3), 290.45(b)(1)(C), 290.46(e)(1), (t), and (u), and the Code, §26.121, and Permit 13293-001 by failing to provide a water well capacity of 0.6 gallons per minute per con-

nection, by failing to provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions, by failing to operate under the direct supervision of a certified operator, by failing to provide each storage tank with access openings in accordance with current standards, by failing to provide an overflow device at ground level or located near enough and at a position accessible from a ladder or the balcony for inspection purposes, by failing to have a door for each chlorinator room, by failing to provide continuous and adequate service, by failing to provide a minimum pressure tank capacity of 20 gallons per connection, by failing to protect water production and storage facilities with an intruder-resistant fence, by failing to provide a total pump capacity of 2.0 gallons per minute per connection, by failing to provide accurate water usage records, failing to maintain watertight discharge lines, and by failing to provide accurate monthly effluent reports, unauthorized discharge of wastewater, and exceedance of CBOD5 and NH3 permit limits; PENALTY: \$51,222; STAFF ATTORNEY: Guy Henry, Litigation Support Division, MC 175, (512) 239-6259; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758-5336, (512) 339-3795.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712889

Kevin McCalla

Director, Legal Division

Texas Resource Conservation Commission

Filed: September 29, 1997



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 2, 1997**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code or the Health and Safety Code, the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 2, 1997**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however,

§7.075 provides that comments on the AOs should be submitted to the TNRCC in writing.

(1)COMPANIES: Bernard L. Braddock, Donald F. Braddock, Royce E. & Lanell Burns, Sandra D. Cambiaso, Johnny D. Dunham, Deborah L. Hankey, Robert W. Hoover, Jr., John W. Jackson, George F. Jones, Thelma Karpiuk (deceased), Fred E. Lewis, Jerry Locke, Stanley W. McBride, Bernard A. Pesak, Lynn M. Purcell, David Saldana, Deborah P. Smith, Johnny Tauzin, Marylynn Wagner, and Kenneth R. Wall; DOCKET NUMBER: 96-1763-MWD-E; ACCOUNT NUMBER: Enforcement Identification Number 8799; LOCATION: Extraterritorial Jurisdiction of the City of Alvin, Brazoria County, Texas; TYPE OF FACILITY: wastewater system; RULE VIOLATED: The Code, §26.121, by engaging in an activity contributing to an unauthorized discharge which continues to cause pollution of water in the State of Texas; PENALTY: \$307; ENFORCEMENT COORDINATOR: Merrilee Mears, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486 (713) 767-3500.

(2)COMPANY: Buster Concrete and Materials, Incorporated; DOCKET NUMBER: 97-0705-AIR-E; ACCOUNT NUMBER: HV-0044-C; LOCATION: Greenville, Hunt County, Texas; TYPE OF FACILITY: asphalt concrete plant; RULE VIOLATED: 30 TAC §116.115 and the Act, §382.085(b), by failing to maintain pressure drop at or above eight inches of water as required by Special Provision 5 of TNRCC Permit Number 207, and by failing to maintain records of maintenance, scrubber pressure drop, watering of roads and stockpiles, duration of start-up, duration of shutdown, and duration of malfunctions as required by Special Provision 32 of TNRCC Permit Number 207; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: David Edge, (512) 239-1779; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3)COMPANY: Compound Manufacturing Distribution; DOCKET NUMBER: 97-0322-MLM-E; ACCOUNT NUMBER: LH-0178-A; LOCATION: Dayton, Liberty County, Texas; TYPE OF FACILITY: polymer manufacturing and distribution plant; RULE VIOLATED: 30 TAC §116.110(a) and the Act, §382.0518(a) and §382.085(b), by failing to obtain a permit or satisfy the conditions of a standard exemption; and 30 TAC §335.4 and the Code, §26.121, by failing to prevent an unauthorized discharge of industrial wastes to the soils at the plant; PENALTY: \$2,970; ENFORCEMENT COORDINATOR: Adele Noel, (512) 239-1045; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4)COMPANY: Diamond Shamrock Refining and Marketing Company; DOCKET NUMBER: 97-0269-IWD-E; ACCOUNT NUMBER: Registration Number L-99228; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: treatment system for the remediation of contaminated ground water; RULE VIOLATED: 30 TAC §321.133(c)(2)(A), by exceeding the 0.5 milligram per liter (mg/l) limitation for benzene, toluene, ethylbenzene, and total xylene and by exceeding the 0.05 mg/l limitation for benzene; PENALTY: \$2,760; ENFORCEMENT COORDINATOR: Merrilee Mears, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas, 77023-1486, (713) 767-3500.

(5)COMPANY: Five Points Salt Water Disposal; DOCKET NUMBER: 97-0573-AIR-E; ACCOUNT NUMBER: ML-0181-B; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: salt water disposal plant; RULE VIOLATED: 30 TAC §116.115(a), Permit Number 21407, Special Provision Number 6, Agreed Order Num-

ber 93-02(e), and the Act, §382.085(b), by failing to maintain the flare automatic re-ignition system in good working order during normal operations; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Kevin Cauble, (512) 239-1874; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5421, (915) 570-1359.

(6)COMPANY: Hi-Plains Truck and Body; DOCKET NUMBER: 97-0401-AIR-E; ACCOUNT NUMBER: PG-0151-J; LOCATION: Amarillo, Potter County, Texas; TYPE OF FACILITY: automotive paint and body shop; RULE VIOLATED: 30 TAC §116.110(a) and the Act, §382.085(b) and §382.0518(a), by failing to obtain a permit or satisfy the conditions for an exemption prior to constructing and operating an automotive paint and body shop; PENALTY: \$500; ENFORCEMENT COORDINATOR: Kevin Cauble, (512) 239-1874; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(7)COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 97-0354-AIR-E; ACCOUNT NUMBER: JE-0052-V; LOCATION: Port Neches, Jefferson County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(a) and the Act, §382.085(b), by failing to properly record the oxygen and carbon monoxide data from the continuous emission monitors at Boiler Numbers 1 and 2 as required by Permit Number 9504, Special Condition 15; and 30 TAC §120.11 and the Act, §382.085(b), by failing to properly record the oxygen and carbon monoxide data from the continuous emission monitors at the Red Oil Incinerator as required by Permit Number HW-50055-000, Provision IV.E.8; PENALTY: \$5,600; ENFORCEMENT COORDINATOR: Lawrence King, (512) 239-1405; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(8)COMPANY: Johnny Bradshaw D.B.A. Ridge Rock Grocery & Coach's BBQ; DOCKET NUMBER: 96-1494-PWS-E; ACCOUNT NUMBER: Public Water Supply Number 0480018; LOCATION: Paint Rock, Concho County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.105(b), by having an acute Maximum Contaminant Level Violation for microbiological contaminants; 30 TAC §290.106(a), by failing to submit bacteriological samples; 30 TAC §290.106(b), by failing to submit the proper number of bacteriological samples; 30 TAC §290.103(5), by failing to provide public notification of the above listed violations; 30 TAC §290.112, by failing to maintain records of bacteriological analyses for at least ten years and records of actions taken to correct violations of primary drinking water regulations for at least three years; 30 TAC §290.106(a)(1), by failing to collect bacteriological samples from active service connections which are representative of water throughout the distribution system; 30 TAC §290.113, by exceeding the maximum permissible levels for sulfate, total dissolved solids, iron, and manganese concentrations; 30 TAC §290.42(e), by failing to provide disinfection equipment so that continuous and effective disinfection can be secured under all conditions; 30 TAC §290.44(d), by failing to maintain a minimum residual pressure of 35 pounds per square inch; 30 TAC §290.46(k), by failing to properly disconnect well Number 1 from the distribution system and providing an interconnection to an unapproved water supply; 30 TAC §290.41(c)(3)(p), by failing to provide an all-weather access road to the Number 2 well site; 30 TAC §290.41(c)(1)(D), by failing to keep grazing livestock at least 50 feet away from a public water supply well; and 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary easement from adja-

cent landowners and record at the county courthouse; PENALTY: \$0; ENFORCEMENT COORDINATOR: Claudia A. Chaffin, (512) 239-4717; REGIONAL OFFICE: 301 West Beauregard Avenue, Suite 202, San Angelo, Texas 76903-6326, (915) 655-9479.

(9)COMPANY: Modern, Incorporated; DOCKET NUMBER: 97-0371-AIR-E; ACCOUNT NUMBER: HF-0057-V; LOCATION: Lumberton, Hardin County, Texas; TYPE OF FACILITY: steel container manufacturing plant; RULE VIOLATED: 30 TAC §116.115(a) and the Act, §382.085(b), by allowing total volatile organic compound (VOC) emissions from plant operations to exceed six pounds per hour; and 30 TAC §115.421(a)(9)(A)(iii) and Agreed Order Number 96-0052-AIR-E and the Act, §382.085(b), by using coatings with VOC contents greater than 3.5 pounds per gallon of coating delivered to the application system as an extreme performance coating; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Lawrence King, (512) 239-1405; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(10)COMPANY: Southern Clay Products, Inc.; DOCKET NUMBER: 97-0381-AIR-E; ACCOUNT NUMBER: GG-0029-J; LOCATION: Gonzales, Gonzales County, Texas; TYPE OF FACILITY: organoclay plant; RULE VIOLATED: By letter dated July 31, 1996, Southern Clay Products, Incorporated voluntarily disclosed the following regarding the operation of its organoclay plant, pursuant to the Environmental, Health, and Safety Audit Privilege Act, Texas Civil Statutes, Article 4447cc, §10 for the following reasons: the Number 1 filter press and the quaternary ammonium chloride storage tanks were replaced without obtaining an air permit; the float cells were installed at the organoclay plant without obtaining a permit for the resulting isopropyl alcohol (IPA) emissions; a dryer/filter was constructed in 1986 and authorized by Special Permit Number 16759, but the permit did not cover the IPA emissions from the unit; Special Permit Number 16759 was amended in 1988 to authorize the simultaneous use of two dryers, but the amendment did not address the installation of a second wet processing line and a second filter press unit; wastewater containing IPA was directed to the wastewater pond without first obtaining an air permit for the IPA emissions; Special Permit Number 16759 was amended to allow the addition of a fluid bed dryer, but the amendment application did not identify the addition of filter press Number 3 nor did the amendment account for the IPA emissions from the press and dryer; a new settling/irrigation facility and a dry process steam dryer were constructed in 1994 without obtaining an air permit; a mill and bag packer vented to a common baghouse and a predryer were installed, but not all of the applicable requirements of the New Source Performance Standards, Subparts OOO and UUU, were met; Special Provisions 1-3 of Special Permit Number 16759 were violated; an initial emissions inventory was not timely filed, nor were any emissions inventory updates submitted; and emission fees were underpaid; PENALTY: \$0; ENFORCEMENT COORDINATOR: Sabelyn A. Pussman, (512) 239-6061; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (512) 980-3100.

(11)COMPANY: The City of Electra; DOCKET NUMBER: 97-0415-MWD-E; ACCOUNT NUMBER: Permit Number 10020-001; LOCATION: Electra, Wichita County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Permit Number 10020-001 and the Code, §26.121, by discharging effluent that was substantially noncompliant with the total suspended solids daily average concentration permit limit of 90 milligrams per liter; PENALTY:

\$0; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 209 South Danville, Suite 200B, Abilene, Texas 79605-1451, (915) 698-9674.

(12)COMPANY: The City of Henderson; DOCKET NUMBER: 97-0487-MWD-E; ACCOUNT NUMBER: Permit Number 10187-001; LOCATION: Henderson, Rusk County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Permit Number 10187-001 and the Code, §26.121, by substantially exceeding the ammonia-nitrogen permit limitation for four consecutive months; PENALTY: \$14,720; ENFORCEMENT COORDINATOR: Merrilee Mears, (512) 239-4490; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(13)COMPANY: The City of Ranger; DOCKET NUMBER: 97-0334-MWD-E; ACCOUNT NUMBER: Permit Number 11557-001; LOCATION: Ranger, Eastland County, Texas; TYPE OF FACILITY: domestic wastewater treatment plant; RULE VIOLATED: Permit Number 11557-001 and the Code, §26.121, by exceeding the five-day biochemical oxygen demand daily average concentration limitation; PENALTY: \$15,200; ENFORCEMENT COORDINATOR: Roxanne Cook, (512) 239-4496; REGIONAL OFFICE: 209 South Danville, Suite 200B, Abilene, Texas 79605-1451, (915) 698-9674.

(14)COMPANY: Windsor Park Veterinary Clinic; DOCKET NUMBER: 97-0740-AIR-E; ACCOUNT NUMBER: TH-0674-V; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: veterinary clinic; RULE VIOLATED: 30 TAC §116.110(a) and the Act, §382.085(b) and §382.0518(a), by operating pathological waste incinerators without first obtaining a permit or meeting the conditions of a permit exemption; PENALTY: \$0; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

Issued in Austin, Texas, on September 23, 1997.

TRD-9712636

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: September 23, 1997

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Notice of Public Hearing (Chapter 70)

Notice is hereby given that under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning revisions to Chapter 70.

The commission proposes the repeal of §70.4, concerning Annual Enforcement Report. The purpose of the proposed action is to streamline agency reporting of enforcement actions, as well as to implement new Water Code, §5.123, as added by House Bills 1133 and 1367, 75th Legislature, 1997, which requires the commission to prepare an electronic enforcement report.

A public hearing on the proposal will be held November 3, 1997, at 10:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion

within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97158-070-AD. Comments must be received by 5:00 p.m., November 3, 1997. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712650

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: September 23, 1997



Revised Notice of Receipt of Application and Declaration of Administrative Completeness for Municipal Solid Waste Management Facility

For The Period of September 22, 1997 through September 26, 1997

APPLICATION BY BROWNING-FERRIS, INC., Proposed Permit Number MSW1948-A, to authorize an amendment for vertical expansion of a Type I municipal solid waste management facility permit. The permit would allow the applicant to receive approximately 606 tons of municipal solid waste per day. The existing site covers approximately 134.55 acres of land and is located approximately 3.2 miles north of Donna, Texas and within the ETJ of the City of Donna, approximately 1/4 mile east of FM 493 with access provided to the landfill from Mile 12 North Road in Hidalgo County, Texas.

APPLICATION BY ECD LANDFILL, INC., Proposed Permit Number MSW1745-A, to authorize an amendment for vertical and lateral expansion of a Type I municipal solid waste management facility permit. The permit would allow the applicant to receive an average of 2,227 tons of municipal solid waste per day over the life of the site. The site will cover approximately 352.6 acres of land and is located approximately 4 miles north of Ennis, 0.75 mile north of Garrett, and 1.8 miles south of Palmer in Ellis County, Texas.

If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the application number, TNRCC docket number or other recognizable reference to the application; (3) the statement I/we request an evidentiary public hearing; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 1101, Texas Natural Resource

Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Issued in Austin, Texas, on September 26, 1997.

TRD-9712822

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 26, 1997



Notice of Receipt of Application and Declaration of Administrative Completeness for Municipal Solid Waste Management Facility

For The Period of September 22, 1997 through September 26, 1997
APPLICATION BY CITY OF BROWNWOOD, Proposed Permit Amendment Number MSW1562-A, to authorize an amendment for horizontal and vertical expansion to a Type I municipal solid waste management facility permit. The facility is to daily receive approximately 170 tons of solid waste. The permit boundary covers approximately 648 acres of land and includes a 130-acre landfill. The proposed amended site is located approximately one mile south of Brownwood and immediately east of Camp Bowie in Brown County, Texas. The existing site entrance is located on County Road 237 (Indian Creek Road) approximately 1.5 miles south of FM 45.

If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the application number, TNRCC docket number or other recognizable reference to the application; (3) the statement I/we request an evidentiary public hearing; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 1101, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Issued in Austin, Texas, on September 26, 1997.

TRD-9712824

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 26, 1997



Provisionally-Issued Temporary Permits to Appropriate State Water

Listed below are permits issued during the period of September 26, 1997.

Application Number TA-7872 by Hunter Industries, Inc. for diversion of 1 acre-foot in a 2-month period for industrial (roadway construction) purposes. Water may be diverted from Harris Branch, Colorado River Basin, at the crossing of FM 764, at a point located approximately 12 miles northeast of Austin, Travis County, Texas and approximately 5 miles southeast of Pflugerville.

Application Number TA-7873 by Duinick Bros., Inc. for diversion of 6 acre-feet in a 9-month period for industrial (roadway construction) use. Water may be diverted from the Clear Fork Trinity River, at the river crossing of State Hwy. 51 approximately 7 miles northeast of Weatherford, Parker County, Texas, Trinity River Basin, Texas.

Application Number TA-7875 by Glenn-Wade Contractors, Inc. for diversion of 5 acre-feet in a 2-month period for industrial (roadway construction) use. Water may be diverted from Post Oak Creek, Trinity River Basin, approximately 13 miles southwest of Corsicana, Navarro County, Texas at the crossing of State Hwy. 31 and Post Oak Creek, Trinity River Basin.

Application Number TA-7876 by Russell & Sons Construction Co. for diversion of 10 acre-feet in a 6-month period for industrial (roadway construction) use. Water may be diverted from Mill Creek, Sabine River Basin, approximately 10 miles north of Henderson, Rusk County, Texas at the crossing of Mill Creek at an unnumbered county road located between State Hwy. 322 and FM 782.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing as provided in §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

Issued in Austin, Texas, on September 26, 1997.

TRD-9712829

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 26, 1997

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Texas Department of Protective and Regulatory Services

Request for Proposal-Healthy Families Planning Grant to Establish New Programs

The Texas Department of Protective and Regulatory Services (TDPRS), Community Initiatives Division, is soliciting proposals for planning grants to start new Healthy Families programs in communities across Texas. Healthy Families services are targeted to new parents and their newborn infants for the first three to five years of life. Funds expended under contracts awarded under this RFP are intended to assist community organizations to establish intensive family visitation programs under the Healthy Families model as taught by Healthy Families America under the National Committee to Prevent Child Abuse or Healthy Start Hawaii.

DESCRIPTION OF SERVICES: Funding under this RFP is available to help communities plan for the implementation of Healthy Families services in five Texas communities. During fiscal year 1998 funding will be used for planning and to build community partnerships. Contractors that successfully complete the planning year and are ready to begin service delivery in year 2 will be eligible for funds to begin service delivery in fiscal year 1999. Programs established under this RFP must commit to meet the criteria for critical program elements as prescribed by Healthy Families of America. In the first 60 days of year 2, service delivery staff must be trained by Healthy Families certified trainers using curriculum developed by the National Committee to Prevent Child Abuse (NCPA) or Healthy Start of Hawaii.

RFP RELEASE DATE: RFPs will be mailed to requestors on September 23, 1997 via certified mail. RFPs may be picked up at the address listed below on or after September 23, 1997 at 9:00 a.m.

CLOSING DATE/EFFECTIVE DATE: November 7, 1997 at 3:00 p.m. Central Standard Time. Contracts awarded under this proposal take effect December 1, 1997.

TERMS AND AMOUNT: Five planning contracts for \$30,000 each will be awarded for 9 months in fiscal year 1998 with possible expansion to service delivery. During the planning year the contractor must provide cash or in-kind local match equal to a minimum of 20% of the \$30,000 planning grant. These five planning grant contractors will be eligible, based on performance under the initial contract, to receive an additional contract for service delivery in fiscal year 1999. The service delivery contract may be renewed annually at the Department's discretion for an additional two years. Approximately \$600,000 will be available for the five contracts for fiscal year 1999 with a 10% match requirement. In the first year of service delivery (fiscal year 1999) programs are expected to serve 30-60 families through the Healthy Families contract.

SUBSEQUENT RFP: Five additional planning contracts will be awarded for fiscal year 1999 under a separate RFP.

SELECTION CRITERIA: Selection will be based on the Plan of Operation (60%) and the Cost Information (40%). The Plan of Operation percentage points are as follows: 10%—Documentation of community need; 20%—Documentation of community collaboration and partnership; 15%—Documentation of plans for implementing services according to the Healthy Families model; 15%—Documentation of leadership, planning ability and staff qualifications; 60%—Total for plan of operation.

CONTACT PERSON: Interested parties may receive a bid packet from : Mary Birnbaum (E-541); Texas Department of Protective and Regulatory Services; P.O. Box 149030; Austin, Texas 78714-9030; (512) 438-3755. Street Address: 701 West 51st Street, Fifth Floor, East Tower; Austin, Texas 78751.

Issued in Austin, Texas, on September 15, 1997.

TRD-9712727

C. Ed Davis

Deputy Commissioner for Legal Services

Texas Department of Protective and Regulatory Services

Filed: September 24, 1997



Texas State Board of Examiners of Psychologists

Corrections of Error

The Texas State Board of Examiners of Psychologists proposed an amendment to 22 TAC §463.32. The rule appeared in the August 26, 1997, issue of the *Texas Register*, (22 TexReg 8528).

Section 463.32(b), the words "Completion of internship or experience. Applicants must have completed a" is new language and should be in bold letters.

The Texas State Board of Examiners of Psychologists adopted new 22 TAC §465.3. The rule appeared in the August 26, 1997, issue of the *Texas Register*, (22 TexReg 8546).

In the preamble, eighth paragraph, the word "tract" should be "track".

Also in the preamble, tenth paragraph, the words in quotations "if these activities and services constitute a part of his supervised course of study" should not be in italics. The word "only" is the one word that should be italicized.

The Texas State Board of Examiners of Psychologists adopted new 22 TAC §465.4. The rule appeared in the August 26, 1997, issue of the *Texas Register*, (22 TexReg 8547).

In the preamble, fourth paragraph, the rule number should be "465.4" instead of "465.3".



Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On September 19, 1997, Metro Access Network, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate No. 60062. Applicant intends to change its name only.

The Application: Application of Metro Access Network, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 18012.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than October 8, 1997. You may contact the commission's Office of

Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18012.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712629

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: September 22, 1997



Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on September 22, 1997, to amend a certificate of convenience and necessity pursuant to §§14.001, 52.002, 54.001, 54.005, 54.052 - 54.054, and 54.258 of the Public Utility Regulatory Act. A summary of the application follows.

Docket Title and Number: Application of Southwestern Bell Telephone Company to Amend Certificate of Convenience and Necessity within Bell County, Docket Number 18018 before the Public Utility Commission of Texas.

The Application: In Docket Number 18018, Southwestern Bell Telephone Company requests approval to amend the boundary between its Bartlett exchange and Central Telephone Company of Texas' Salado exchange to reflect the way the boundary is currently being administered.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 on or before October 29, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712779

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: September 25, 1997



Notices of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on September 19, 1997, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Intetech, L.C. for a Service Provider Certificate of Operating Authority, Docket Number 17909 before the Public Utility Commission of Texas.

Applicant intends to provide resale business and residential local exchange service.

Applicant's requested SPCOA geographic area includes the counties of Brazos and Travis.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than October 8, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712627

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: September 22, 1997

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 19, 1997, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Switched Services Communications, L.L.C. for a Service Provider Certificate of Operating Authority, Docket Number 17882 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange services.

Applicant's requested SPCOA geographic area includes those local exchange areas served by Southwestern Bell Telephone Company and GTE Southwest, Inc., in the state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than October 8, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712630

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: September 22, 1997

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Notice is given to the public of the filing with the Public Utility Commission of Texas an application on September 19, 1997, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Texas HomeTel, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 18010 before the Public Utility Commission of Texas.

Applicant intends to provide business and residential resold local telecommunications services, including but not limited to flat-rate local exchange service, toll restrictions, caller ID, call control options, custom calling services, 911 emergency services and any other services which are available in every exchange served by Southwestern Bell Telephone Company and GTE Southwest, Inc. in the state of Texas.

Applicant's requested SPCOA geographic area includes the geographic regions currently served by the following incumbent local exchange companies (ILECs) and hereby incorporates the boundaries of these ILECs as the boundary of its proposed service area: GTE Southwest, Inc., and Southwestern Bell Telephone Company.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than October 8, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712628

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: September 22, 1997

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 22, 1997, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of FaithNet Telecommunications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 17946 before the Public Utility Commission of Texas.

Applicant intends to resell local exchange service to business and residential customers in the counties of Dallas, Collin, Denton, Rockwall, and Tarrant.

Applicant's requested SPCOA geographic area includes the geographic regions currently served by the following incumbent local exchange companies (ILECs) and hereby incorporates the boundaries of these ILECs as the boundary of its proposed service area: Southwestern Bell Telephone Company, GTE Southwest, Inc., and Sprint/United Telephone Company of Texas, Inc.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than October 8, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712722

Rhonda Dempsey

Rules Coordinator
Public Utility Commission of Texas
Filed: September 24, 1997



Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas of an application pursuant to PUBLIC UTILITY COMMISSION SUBSTANTIVE RULE 23.27 for a 233 station addition to the existing PLEXAR-Custom service for Eanes Independent School District in Austin, Texas.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for a 233 Station Addition to the Existing PLEXAR-Custom Service for Eanes Independent School District in Austin, Texas, pursuant to PUBLIC UTILITY COMMISSION SUBSTANTIVE RULE 23.27. Tariff Control Number 18028.

The Application: Southwestern Bell Telephone Company is requesting approval for a 233 station addition to the existing PLEXAR-Custom service for Eanes Independent School District in Austin, Texas. The geographic service market for this specific service is the Austin local access and transport area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on September 26, 1997.

TRD-9712821
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 26, 1997



Public Notices of Interconnection Agreement

On September 16, 1997, Southwestern Bell Telephone Company (SWBT) and Intermedia Communications, Inc. (Intermedia), collectively referred to as Applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, 75th Legislature, R.S. chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated §§11.001-63.063) (PURA). The joint application has been designated Docket Number 18001. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the

public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the Applicants. The comments should specifically refer to Docket Number 18001. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by October 31, 1997, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the Applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18001.

Issued in Austin, Texas, on September 23, 1997.

TRD-9712675
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 23, 1997



On September 19, 1997, Southwestern Bell Telephone Company (SWBT) and MFS Communications Company, Inc. (MFS), collectively referred to as Applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, 75th Legislature, R.S. chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated §§11.001-63.063) (PURA). The joint application has been designated Docket Number 18011. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the Applicants. The comments should specifically refer to Docket Number 18011. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by November 7, 1997, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the Applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. In-

terested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18011.

Issued in Austin, Texas, on September 23, 1997.

TRD-9712676

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: September 23, 1997



Request for Additional Comments on Questions Relating to Nuclear Decommissioning Trusts

The commission requests additional information from the parties responding to Project Number 14908, which proposes to amend Public Utility Commission of Texas (PUC) Substantive Rule §23.59, as published June 3, 1997, in the *Texas Register* (22 TexReg 4854). Response to these questions may be submitted to Filing Clerk, Public Utility Commission of Texas, 1701 North Congress, P.O. Box 13326, Austin, Texas 78711-3326 within 10 days of publication. If you need additional information, contact Martha Hinkle, Manager, Financial Analysis, at (512) 936-7435.

1. If the commission were to use the duration (or weighted average remaining life) of the decommissioning liability as proposed by Phoenix Duff & Phelps on page 9 of its comments, filed with the PUC on July 3, 1997 in Project Number 14908, to determine when to reduce the proportion of equity investments:

- a) During which year(s) would the duration of your plant's decommissioning liability be below four years?
- b) During which year(s) would the duration be less than two years?
- c) In what year do you expect decommissioning of your nuclear units to commence?
- d) In what year do you expect decommissioning to be complete?

2. If the commission were to reject the prudent investor standard, and elected to use the Standard and Poor's (S&P) earnings and dividend rankings for common stock, as provided in exhibit X of the comments filed by Phoenix Duff & Phelps, to assess the quality of the overall equity portfolio:

- a) What ranking would be appropriate to use?
- b) What is the composite rank of the S&P 500, assuming equal weighting?
- c) How difficult or burdensome would it be to check the composite ranking of the equity portfolio on a quarterly basis?
- d) Would this be a better measure to assess the overall equity portfolio than the bond rating standard currently in place?

e) Are there any other ratings or standards that could be used to assess the quality of the equity portfolio that would be better or easier to use? (i.e. Value Line safety ranking, etc.)

(Please provide supporting documentation for your answers, if applicable)

3. Should utilities be required to appoint an investment manager when the trust achieves a certain size?

a) If so, what amount of jurisdictional trust dollars is appropriate for requiring an independent manager?

b) Should utilities be required to appoint an investment manager to manage the equity portfolio if the equity portfolio is not in commingled funds?

c) Do you have an independent investment manager?

d) If so, what part of the portfolio does he/she manage? (Please explain the rationale for your answers, if applicable.)

Issued in Austin, Texas, on September 25, 1997.

TRD-9712780

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: September 25, 1997



Railroad Commission of Texas

Correction of Error

The Railroad Commission of Texas adopted an amendment to 16 TAC §3.37. The rule appeared in the September 5, 1997, issue of the *Texas Register*, (22 TexReg 8973).

On page 8974, §3.37(a)(2), last sentence, the last word of the sentence was incorrectly submitted as “date” but should be “data”.



Sunset Advisory Commission

Request for Proposal

Pursuant to House Bill 3281, 75th Session, the Sunset Advisory Commission announces its intent to issue a formal request for proposal for conducting a comprehensive analysis of the structure, efficiency and effectiveness of the Attorney General’s Child Support Enforcement Division. The Commission expects to issue the request in mid-October. Interested firms with extensive experience in evaluating government programs may contact the Sunset Commission at (512) 463-1300 for additional information.

Issued in Austin, Texas, on September 25, 1997.

TRD-9712796

Joey Longley

Director

Sunset Advisory Commission

Filed: September 25, 1997



Texas Department of Transportation

Notice of Invitation

Notice of Invitation: The Yoakum District of the Texas Department of Transportation (TxDOT) intends to enter a contract with a professional engineer, pursuant to Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.43, to provide the following services. To be considered, a prime provider and any subproviders proposed on the team must be precertified by the deadline date for receiving the letter of interest for each of the advertised work category(s), unless the work category is a non-listed work category. To qualify for contract award, a selected prime engineer must perform a minimum of 30% of the actual contract work.

Contract Number 13-845P5001 - The precertified work categories and the percent of work per category are: 3.5.1 - Major Bridge Layout (3%); 4.2.1 - Major Roadway Design (80%); 8.1.1 - Signing, Pavement Marking and Channelization (4%); 10.1.1 - Hydrologic Studies (4%); 10.2.1 - Basic Hydraulic Design (6%); 10.5.1 - Bridge Scour Evaluations and Analysis (1%); 15.2.1 - Design Survey (2%). The work to be performed shall consist of the preparation of plan, specification, and estimate (PS&M) documents to construct US 77, 7.5 km North of Victoria city limits South to Northside Road. The project will consist of widening an existing two lane roadway with shoulders to a four lane divided roadway with a grassy median.

Long List Criteria: TxDOT will consider the following criteria in its review of all interested providers.

1. Past Performance Scores

Minimum requirements - Must have two good references from other entities on similar type of work.

Preferred requirements - Must have three good references which can be verified from other entities on similar type of work.

2. Project Requirements (Team Capability Experience)

Major Bridge Layouts (3.5.1) Minimum requirement - must have worked on three similar type projects within the past three years (five preferred).

Major Roadway Design (4.2.1) Minimum requirement - Two similar type projects (major reconstruction) within the past three years (four preferred).

Signing, Pavement Marking and Channelization (8.1.1) Minimum requirement - Two similar type projects within the past five years (three preferred).

Hydrologic Studies (10.1.1) Minimum of three year experience on similar type projects (five years preferred).

Basic Hydraulic Design (10.2.1) Minimum requirement - Must have worked on three similar type projects within the past three years (five preferred).

Bridge Scour Evaluations and Analysis (10.5.1) Minimum of three years experience on similar type projects (five years preferred).

Design Survey (15.2.1) Minimum of three years experience on similar type projects (five years preferred).

3. Special Project Related Experience of Project Manager and Team Members

Major Bridge Layouts (3.5.1): Minimum of one Texas Registered Professional Engineer with related similar project experience (three

preferred); Minimum of one year experience in capacity and level of service analysis (two preferred).

Major Roadway Design (4.2.1): Minimum of one Texas Registered Professional Engineer with related similar project experience (three preferred); Minimum of three years experience at roadway design on two separate projects (five years preferred experience on four separate projects).

Signing, Pavement Markings and Channelization (8.1.1): Minimum of one Texas Registered P.E (two preferred); Minimum of two years related project experience (three preferred).

Hydrological Studies (10.1.1): Minimum of one Texas Registered P.E. with four years related project experience (two P.E.'s preferred); Minimum of two years as a P.E. in analysis of complex watershed (four years preferred).

Basic Hydraulic Design (10.2.1): Minimum of one Texas Registered P.E. with four years related experience (two P.E.'s preferred); Minimum of two years as a P.E. in hydrologic analysis, hydraulic design, and storm water quality evaluation (four years preferred)

Bridge Scour Evaluations and Analysis (10.5.1): Minimum of one Texas Registered P.E. with four years related project experience (three P.E.'s preferred); Minimum of two years as a P.E. in river geomorphology sediment transport and scour analysis, and flood plain analysis (three years preferred).

Design Survey (15.2.1): Minimum of one Texas Registered R.P.L.S. with two years experience in roadway construction staking. (two R.P.L.S.'s with three years experience preferred).

4. DBE/HUB Goal: This criterion is either a commitment or not and has no other preferred status. Therefore, a provider gets three points for meeting the assigned goal or zero points for not meeting the assigned goal.

HUB Goal: The goal for Historically Underutilized Business (HUB) participation in the work to be performed under this contract is a minimum of 20% of the contract amount.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (512) 293-4372, or by hand delivery to TxDOT, Yoakum District, Attention: Billy Goodrich, 403 Huck Street, Yoakum, Texas or by mail to P.O. Box 757, Yoakum, Texas 77995. Letters of interest will be received until 5:00 p.m., Friday, October 24, 1997.

Letter of Interest Requirements: The letter of interest is limited in length to three pages (single sided with no attachments or appendices) and must include a reference to contract number 13-845P5001; an organizational chart containing names, addresses, telephone number and fax number of the prime provider and any subproviders proposed for the team and their contract responsibilities by work category; certification that the proposed team individuals are currently employed by either the prime provider or a subprovider; the prime provider's project manager and key personnel proposed for the contract; team capabilities; special project related experience; evidence of compliance with the assigned DBE/HUB goal through the prime provider or subprovider identified on the team, or a written commitment to make a good faith effort to meet the assigned goal; project related experience performed since precertification; and other pertinent information addressed in the notice, including references for related projects.

Agency Contact: Requests for additional information regarding this Notice of Invitation should be addressed to Billy Goodrich at (512) 293-4381 or fax number (512) 293-4372.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712878

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: September 29, 1997



Public Notice

The Texas Motor Vehicle Commission published proposed rules concerning Title 16, Texas Administrative Code, Chapters 101, 103, 107, and 111 in the September 5, 1997, issue of the *Texas Register* (22 TexReg 8823). The preambles for these proposed amendments and repeal stated that the deadline for comments was September 23, 1997, and the Board would consider final adoption of the proposals at its October 9, 1997, meeting.

The meeting originally planned for October 9, 1997, has been rescheduled for November 6, 1997, at which time the Board will take final action on the proposed rules.

For further information, contact Brett Bray, Director, Motor Vehicle Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701, (512) 416-4800.

Issued in Austin, Texas, on September 23, 1997.

TRD-9712637

Brett Bray

Director, Motor Vehicle Division

Texas Department of Transportation

Filed: September 23, 1997



Request for Proposal

Request for Proposal: In accordance with 43 TAC §25.901, et seq., the Texas Department of Transportation is requesting proposals from state agencies, local government agencies, metropolitan planning organizations, educational institutions, and private contractors for the Texas Highway Safety Plan (HSP) for fiscal year (FY) 1999 (October 1, 1998 - September 30, 1999).

The Texas HSP is developed through a process beginning the preceding fiscal year through the collection of project proposals from local jurisdictions, as well as agencies with statewide responsibility. The program of work developed in the HSP is intergovernmental in nature and functions, either directly or indirectly, through grants-in-aid agreements and contracts awarded to local jurisdictions, metropolitan planning organizations, state agencies, educational institutions and private contractors. Contracts with vendors will be made through the state purchasing process.

Authority and Responsibility: Federal grant involvement in traffic safety dates from the passage of the National Highway Safety Act of 1966 (23 USC §401, et seq.). Texas passed supporting legislation, the Texas Traffic Safety Act, in 1967 (Transportation Code, Chapter 723). The Texas Traffic Safety Program was made an integral part of the Texas Department of Transportation in 1979, and the department's

districts assumed responsibility for local projects. The program operates within the Department's Traffic Operations Division. The executive director of the Department is the designated Governor's Highway Safety Representative.

HSP Review and Approval: The HSP is prepared and submitted to the Transportation Commission for approval in May or June of each year. Upon approval, it is submitted to the Governor's Office for review and comment and then forwarded to the federal government for their information. The HSP becomes operational on October 1 of every year. The National Highway Traffic Safety Administration (NHTSA) provides funding to implement the HSP.

HSP Program Area: The Fiscal Year 99 HSP will be divided into 12 program areas. The program areas are either federally funded or funded primarily from state sources. In addition to federal and state funds, some participating local governments provide matching funds.

The first six program areas are NHTSA-administered highway safety program areas identified in 23 CFR 1205.3 as encompassing a major highway safety problem. The seventh, Pedestrian and Bicycle Safety is administered jointly by NHTSA and FHWA. Currently, the twelve programs with planned federal or state funding for FY 1999 are:

1. **Alcohol and Other Drug Countermeasures:** selective traffic enforcement projects (STEPs) to apprehend impaired drivers, specialized training for law enforcement instructors on mobile videotaping of driving while intoxicated (DWI) suspects, public information programs on alcohol/other drug use and driving, education programs for convicted DWI offenders and various youth alcohol programs.
2. **Police Traffic Services:** selective traffic enforcement projects (STEPs) to apprehend reckless drivers, enforce posted speed limits, specialized training for law enforcement officers, and assessments.
3. **Occupant Protection:** surveys to identify high-risk non-users, comprehensive programs to promote child safety seat and occupant restraint usage, STEP and evaluations.
4. **Traffic Records:** perform problem identification, develop countermeasures, analyze vehicular crash occurrences and causal factors, support joint efforts with other agencies to improve the state's Traffic Records System. Project proposals for activities that are not information resource-related will be accepted. All information resource-related activities will be subject to TxDOT information resource procurement procedures.
5. **Emergency Medical Services:** training primarily for rural emergency medical services technicians, local projects, and public education.
6. **Motorcycle Safety:** public awareness.
7. **Pedestrian/bicycle Safety:** community school zone safety training, public education and community programs.
8. **Roadway Safety:** safety and traffic engineering education, traffic surveillance, work zone traffic control initiatives, problem identification and highway-rail grade crossing initiatives.
9. **Planning and Administration:** operation of the Traffic Safety Program and traffic safety functions.
10. **Community/corridor/college and Safe Community Programs:** problem identification, plan development, and program implementation for selected cities, counties, state agencies or college/university campuses.

11. **Public Information and Education:** state and local media campaigns, material development and production, statewide theme and conference support, drug-free project celebration support, and newsletter production and distribution.

12. **School Bus Safety:** school bus administration support, driver education, and training materials.

Project Selection Process: shortly after the project proposal due date, traffic safety program and project managers review and evaluate each proposal for applicability to Texas' traffic safety problems. Each project proposal is then scored against a number of selection criteria. Typical criteria include: strength of problem identification, quality of the proposed plan, a realistic action plan and performance goals, necessity and reasonableness of budget, project evaluation method, and capabilities of the proposing agency/organization. Point values are assigned to each criterion so that each project proposal can be scored and placed in a rank order. Once the ranking process is complete, priorities are assigned in order for available funding to be recommended first for those projects awarded the highest priority. Those projects receiving the lowest priority will either not be funded or be deferred until additional federal monies become available during the fiscal year. The traffic safety project selection process is explained in greater detail in Chapter 2 of the Highway Traffic Safety Volume of the Department's Traffic Operations Manual. A copy of this description of the project selection process and project proposal application forms and instructions can be obtained by contacting the Traffic Operations Division; Traffic Safety Section, Mr. John McKay at (512) 416-3170 or Mr. Steve Valdez at (512) 416-2613.

Project Proposals: Proposal submission should include the following information: type of project (impact, support, or required); name and address of proposing agency/organization; contact person (title, telephone and fax number); project title; program area; project year ____ of ____, and previous experience with traffic safety grants/contracts; problem identification (clearly stated, supporting data, and location of problem); proposal plan (performance goals, activities and action plan, and project duration); cost estimate (budget to include labor, other direct costs, and indirect costs); evaluation (how the project will be performed and the performance measures); subgrantee/contractors expertise (personnel, documentation and evidences, and agency commitment); external resources and authentication of agency/subgrantee.

HSP Project Proposals should be submitted by December 30, 1997, to the nearest TxDOT District Office, Attention: Traffic Safety Specialist or to Susan N. Bryant, Traffic Safety Director, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

Issued in Austin, Texas, on September 29, 1997.

TRD-9712877

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: September 29, 1997



Texas Water Development Board

Draft SB 1 Guidance Documents and Regional Designations

The Texas Water Development Board invites public comment on its draft delineation of regional planning areas and of its initial draft of

guidance relating to the state water plan, regional water plans, and use of research and planning funds for regional planning. This draft guidance is the initial draft of what will become board rules for these areas. The rules are being developed to fulfill the requirements of Senate Bill 1, 75th Texas Legislature, which established a new water planning process for the state. The drafts may be obtained on the Internet at "http://www.twdb.state.tx.us/www/twdb/sb1_hp.html", by calling the Texas Water Development Board at (512) 475-2057, or writing to Diane Burr, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711. Please submit comments to Carolyn Brittin at the above address or by fax at (512) 463-9893 by November 1, 1997.

After review of public comments, board staff will revise the drafts, and provide a second draft for public comments on or about November 15, 1997. Public comments on the second draft should be submitted to the board by December 5, 1997. After reviewing this second round of comments, staff will seek board approval December 11, 1997 to publish rules for proposed adoption in the *Texas Register*.

The draft guidance documents: describe the process by which the board designates regional planning groups and by which the regional planning groups will develop regional water plans, including guidelines for consideration of the existing regional planning efforts and the format in which information is to be presented in the regional plans; how the regional plans are integrated into a state water plan; and guidance principles for the state water plan, with which regional plans are to be consistent.

Issued in Austin, Texas, on September 24, 1997.

TRD-9712694

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Filed: September 24, 1997



Texas Workforce Commission

Requests for Proposals

The Texas Workforce Commission (TWC) invites proposals from organizations for the Capacity-Building Grants for Local Community Employer Coalitions. The purpose of the grant is to expand the capacity of local employers and other community partners to assess dependent care needs and to implement strategies to improve dependent care services to working families through a strong local employer coalition.

A. Authorization of Funding

The funds are authorized by Texas Labor Code Annotated §81.0045 (Vernon 1996).

B. Scope of Work

Grant funds must be used to develop the capacity to build a local employer coalition to improve and expand dependent care services to working families. Support will be provided to the local dependent care provider leadership to develop projects to improve quality of dependent care service delivery. Capacity-building technical support will be provided to the grantee community by TWC through consultants and training for Local Resource Persons.

1. The grantee will be expected to work with local business leaders, employers, the dependent care provider community, and the Local Workforce Development Board.

2. The grantee will organize meetings of employer and dependent care provider groups, in which each group will receive training on strategies to improve and expand dependent care services.

3. A Local Resource Person must be identified by grantee and community leaders to assume training and support activities related to development of a local employer coalition. This person will receive training and support from consultants provided by TWC.

a. The trained Local Resource Persons will plan and deliver workshops to build skills needed to complete the community dependent care needs assessment, to finalize the organizational structure of the employer coalition, and to identify and/or start up first projects.

b. A panel of employers, a Local Workforce Development Board member, providers and the grantee will select the Local Resource Person.

c. The Local Resource Person need not be an employee of the grantee.

4. The grantee must provide staff support for the development of a dependent care community needs assessment and the development of an organizational structure for the employer coalition.

5. The grantee must describe a plan for on-going and future support to the employer coalition. Second-year grants to provide continued support to the employer coalition will be available to those communities that are identified as having successfully completed the above tasks.

C. Eligible applicants

Applicants for the Capacity-building Grants must meet the following criteria and provide required documentation as requested in the application packet to be considered eligible.

1. Legal entity – for profit, nonprofit, or public agency in accordance with state/federal regulations.

2. Have participated in Clearinghouse-sponsored employer coalition planning process in 1996-1997.

3. The grantee must provide letters of support (or memorandums of understanding) from two employers or business leaders stating their commitment to provide leadership and in-kind support during the organizational development and implementation of a functioning business coalition.

4. The grantee must show long-term commitment to supporting the employer coalition after grant periods are over.

D. Available Funding

Proposals for capacity building for employer coalitions may request up to \$18,000.

E. Length of contract

The contract period is January 1, 1997 - August 31, 1998.

F. Selection, Notification, and Negotiation Process

TWC anticipates completing the selection process no later than November 28, 1997. Budget and performance statement negotiations will be conducted by TWC in advance of awarding grants. TWC reserves the right to vary all provisions of this RFP prior to the

execution of a contract and to execute amendments to contracts when TWC deems such variances and/or amendments are in the best interest of the State of Texas. TWC has no obligation to award any contracts based on this solicitation.

The deadline for receipt and consideration of a proposal is 4:00 p.m., October 31, 1997. For further information and to order Application Packets, contact the Grants Staff, Texas Work & Family Clearinghouse, 101 East 15th Street, Room 416T, Austin, Texas 78778-0001. Phone (512) 936-3228 FAX (512) 936-3255.

A list of funded organizations will be published in the Texas Register following contract finalization.

Issued in Austin, Texas, on September 23, 1997.

TRD-9712659

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Filed: September 23, 1997



The Texas Workforce Commission (TWC) invites proposals from individuals to provide training to community representatives from up to seven Texas cities. Training topics will include capacity building for local employer dependent care coalitions, strategic planning, and assessment of community dependent care needs. The purpose of the grant is to provide consultation and training on methods and strategies for assessment of community dependent care needs and on the improvement of dependent care services targeted toward working families and local employers.

A. Authorization of Funding

The funds are authorized by Texas Labor Code Annotated §81.0045 (Vernon 1996).

B. Scope of Work

Grant funds must be used to provide training and consultation to designated employer groups and community organizations. Grant funds will be used to develop the capacity to construct a functioning local employer coalition whose purpose is to assess, improve, and expand dependent care services to working families. Consultants will provide capacity-building technical support to the grantee community through consultation and training for designated Local Resource Persons and leaders in the local employer and provider community.

1. In conjunction with the local grantee, local business leaders, employers, the dependent care provider community, and the Local Workforce Development Board, the consultant will plan curricula for workshops to be held in the community within the first three months from the start of funding of the local grantee's contract.

2. The consultant will mentor a designee selected by the grantee, employer collaborative members, and leaders of the local provider community in order to prepare training and support activities in the development of a local employer dependent care coalition.

a. The consultant must commit to participate in a two-day statewide training and curriculum planning session to prepare a curriculum for Capacity Building Workshops outlined above. The date for the curriculum planning session will be determined by TWC. The curriculum will cover all necessary aspects of community dependent

care needs assessment and implementation of an organizational structure of local employer coalitions.

b. The consultant must commit to travel to assigned city or cities within the months specified by TWC and the local grantee.

c. The consultant may be invited to participate in two training events to the group of local leaders from grantee communities in Austin or some other designated city.

C. Eligible Applicants

Eligible applicants will have a Master's degree in Child Development, Early Childhood Education, Human Relations or related fields, or a Bachelor's degree and five years business experience in related fields. They should have at least two years experience in training trainers. Consultants should have experience in developing, managing, or participating in a working coalition or collaboration involving employers.

D. Available Funding

The Clearinghouse may budget up \$20,000 for technical support grants to provide capacity-building for local community employer coalitions.

E. Length of contract

The contract period is November 1, 1997 - August 31, 1998.

F. Selection, Notification, and Negotiation Process

TWC anticipates completing the selection process no later than October 24, 1997. Budget and performance statement negotiations will be conducted by TWC in advance of awarding grants. TWC reserves the right to vary all provisions of this RFP prior to the execution of a contract and to execute amendments to contracts when TWC deems such variances and/or amendments are in the best interest of the State of Texas. TWC has no obligation to award any contracts based on this solicitation.

The deadline for receipt and consideration of a proposal is 4:00 p.m., October 17, 1997. For further information and to order Application Packets, contact the Grants Staff, Texas Work & Family Clearinghouse, 101 E. 15th Street, Room 416T, Austin, TX 78778-0001. Phone (512) 936-3228 FAX (512) 936-3255.

A list of funded individuals will be published in the Texas Register following contract finalization.

Issued in Austin, Texas, on September 23, 1997.

TRD-9712660

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Filed: September 23, 1997



The Texas Workforce Commission (TWC) invites proposals to plan, aggregate, analyze, develop and publish a county by county child care profile. The purpose of this proposal is to provide a profile of child care availability in each county in Texas which will provide local, county and state planners with a valuable tool in designing services to meet the growing needs of working families and demands of welfare reform.

A. AUTHORIZATION OF FUNDING

The funds for the Texas Workforce Commission Child Care Profile are authorized under the FY 1997 Appropriations Bill for the federal Department of Health & Human Services, Child Care Development Fund (CCDF). Funds are subject to the requirements of the Child Care and Development Block Grant Act (CCDBG).

B. PROJECT DESIGN FEATURES:

The Texas Child Care Profile Project (TCCPP) must contain at a minimum a compilation of county by county demographics of working families, child care needs, child care provider characteristics and availability, and statistics on county child care information requests. The profile should contain user friendly statistical charts/graphics to depict portrayed data. Current and reliable data must be used to compile the profile. TWC reserves the right to approve and/or alter: information sources used to compile profile statistics, the profile design, contents, layout and printing.

C. ELIGIBLE APPLICANTS

Applicants must meet the following criteria to be considered eligible:

- 1) Eligible applicants include Texas based non-profits, or for profits as certified by the State Comptroller and US Internal Revenue Service (if applicable), or official governmental entities.
- 2) Eligible applicants must have a proven track record of three years of successful business experience .
- 3) Eligible applicants must have three years experience in conducting analyses of child care needs in Texas communities and have established communication and linkages with existing community services in Texas, especially information & referral and other family-serving agencies.
- 4) Eligible applicants must have previous experience in collecting, compiling, and reporting statistical data. A report example must be furnished.

D. AVAILABLE FUNDING

Proposals for the Texas Child Care Profile Project may request up to \$150,000. Grant funds will be reimbursed pursuant to a contract on a cost reimbursement basis subject to successful performance during the course of the contract period.

E. FUNDING RESTRICTIONS

Expenditures will be reimbursed on cost reimbursement basis subject to measurable and successful performance of the project. Project funds have a five percent administrative cost cap. Ninety-five percent of the funds must be used for direct project activities. Prior permission must be secured from TWC before any part of the project can be subcontracted and/or changes can be made in activities to be performed, project personnel, and/or budgeted expenditures as authorized in the contract.

F. LENGTH OF CONTRACT

The contract period begins January 1, 1998, or as soon thereafter as soon as negotiations can be mutually completed and a contract can be executed. The contract will end May 31, 1999.

G. SELECTION CRITERIA

Applications will be reviewed for eligibility by TWC. Eligibility will be determined by successful completion of all required proposal documentation and meeting eligibility requirements. Eligible applicants will be evaluated and graded by TWC and outside readers. Evalua-

tion criteria and their weights are: applicant's experience in working with Texas child care organizations, associations, and state and local officials in the Child Care field (20%); demonstrated capability and experience in information gathering, analysis, and developing statistical studies/reports (20%); the project's, plan, design, feasibility of success, and proposed timelines for completion (defined in the Performance Narrative and Performance Statement) (20%); experience of key personnel, project staffing and oversight (20%); reasonable Budget (10%); and the applicant's interview presentation (10%).

H. SELECTION, NOTIFICATION, AND NEGOTIATION PROCESS

Applicants will be reviewed and graded on a competitive basis by outside readers and TWC. Detailed evaluation criteria will be included in the application packet. Incomplete applications are subject to rejection and disqualification by the TWC grant's staff. Grading criteria will be included in the application packet. Applications will be reviewed and ranked according to scores, their apparent ability to complete the project timely and successfully, and reviewed for past contracting performance with TWC. Top contenders will be required to attend a panel interview in Austin, Texas between approximately November 17-21. Failure to attend requested interview screening will disqualify a potential applicant. A tentative selection will be determined immediately after interviews are completed. A designated person from the selected entity must be readily available to respond to inquiries, prepare proposed amendments, and negotiate with TWC concerning budget and/or proposed programmatic revisions approximately between, November 24-26, 1997. If a designated person is not readily available to promptly respond to requested revisions, the applicant will not be considered for a contract.

I. DUE DATE AND AGENCY CONTACT

The deadline for hand delivered consideration of a TCCPP proposal is 4:00 p.m., November 12, 1997. Application packets mailed must be post marked by the US. Post Office on November 12, 1997, to be considered eligible. For further information and to order Application Packets, contact the Texas Work & Family Clearinghouse at (512) 936-3228. Application packet originals should be mailed to: Texas Work & Family Clearinghouse, Room 416T, 1117 Trinity, Austin, TX 78778-0001

J. TWC'S OBLIGATIONS

TWC reserves the right to vary all provisions of this Request for Proposal prior to the execution of a contract when TWC deems such variances and/or amendments are in the best interest of the State of Texas.

TWC's obligations under this RFP are contingent upon the actual receipt by the Agency of funds from the US Department of Health and Human Services. If adequate funds are not available to make payment under the terms of this grant, TWC shall terminate this RFP or resulting contract and will not be liable for failure to make payments.

Issued in Austin, Texas, on September 23, 1997.

TRD-9712661

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Filed: September 23, 1997

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